



ALLIANCE FOR JUSTICE SNAPSHOT

Trump's Supreme Court Shortlist:

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Amul Thapar, currently a judge on the U.S. Court of Appeals for the Sixth Circuit, is on President Trump's shortlist for the Supreme Court.

Protections for the Wealthy and Powerful Over the Rights of All

Thapar consistently sides with the wealthy and the powerful at the expense of everyday people. Thapar has made it more difficult for workers and consumers to hold corporations and bad actors accountable, and he has [repeatedly made clear](#) his desire to tie the hands of the agencies that Congress has recognized as having the knowledge and experience to enforce critical laws, safeguard public protections, and ensure the health and safety of the public.

Unlike a majority of the Sixth Circuit, Thapar would have [prevented](#) Flint, Michigan residents Shari Guerten and her daughter, who drank and bathed in lead-tainted water, from suing state and city officials for exposing them to contaminated water.

Thapar [ruled](#) against 1,600 workers who were victims of wage theft by extending the Supreme Court's decision in *Epic Systems*, which dealt with arbitration under the NLRA, to claims under the FLSA. He also [ruled](#) to allow a cable company to deny disability benefits to a sick employee even though the company unlawfully used the same doctor to evaluate — and reject — both the initial claim and the appeal. Thapar [dismissed](#) a suit brought by workers against the Tennessee Valley Authority alleging that, in the wake of the 2009 financial crisis, the TVA slashed pension benefits without proper notice and in violation of the plan's terms. Over a dissent, he held the workers could not even bring the suit because, in his opinion, the cuts “did not cause plaintiffs any harm.”

In another case, Thapar ruled [against](#) the collective bargaining rights of workers by joining a decision which allowed Honeywell, a multinational company, to terminate health care benefits for retirees that had been negotiated in a collective bargaining agreement.

Thapar also voted to [dismiss](#) without trial, over a dissent, Tamika Keathley's claim against her insurance company after it refused to cover major water damage to her house. The company claimed that Keathley had failed to give “prompt notice” of the damage as her policy required, even though she had

immediately called the agent who had sold her the plan and he had told her that she had six months to file a claim.

Thapar cast the deciding vote, over a dissent, to [uphold](#) a Michigan law that automatically suspends the drivers' licenses of poor people who are unable to pay traffic fines without regard to their ability to pay and without affording them payment alternatives. Two single mothers who were unable to pay traffic fines challenged the law as violating due process.

Reproductive Rights

President Trump has again and again reminded us that he will only put justices on the Supreme Court who will pass his litmus test of overturning *Roe v. Wade*. Trump said [overturning Roe](#) “will happen automatically... because I am putting pro-life justices on the court.” Thapar meets this test.

In 2019, Thapar [joined](#) a majority with three other Trump nominees on the Sixth Circuit to allow Ohio to eliminate state funding for Planned Parenthood. The decision rested on the false premise that “plaintiffs do not have a Fourteenth Amendment right to perform abortions” and that “[t]he Supreme Court has never identified a freestanding right to perform abortions.” This holding jeopardizes Ohioans' access to vital, affordable health care, including STI testing, HIV/AIDS treatment, breast and ovarian cancer screenings, and access to contraception.

Thapar would also have [allowed](#) the Republican governor of Tennessee to ban abortions as part of the states' purported efforts to slow the spread of COVID-19. The majority agreed with the health clinic bringing the lawsuit that denying abortion services for the duration of the state's shutdown, which could last many months, violated the constitutional rights of people who needed the procedure. Thapar argued, however, that banning the procedure did not raise any constitutional concerns.

Thapar has also been highly [critical](#) of substantive due process, an essential constitutional doctrine for women's rights.

Sexual Assault

On the Sixth Circuit, Thapar [ruled, contrary](#) to other courts that have addressed the issue, that due process requires parties to be cross-examined in university proceedings established to address incidents of sexual assault. A concurring judge, dissenting from Thapar's proposition that parties must be afforded the opportunity to cross-examine each other, called it “a bridge too far.”

Moreover, Thapar allowed the named perpetrator to bring a Title IX claim against the school on the grounds that the proceedings were “anti-male” and

demonstrated “gender-bias.” The dissent argued “there was no categorical preference shown ... for or against statements by men versus women,” and there was “no basis to reasonably infer that the [university] declined to rely on the statements made by Doe and his witnesses *simply because they were men.*”

Thapar also [ruled](#) against a teenage girl who was sexually assaulted by an older classmate. The girl’s parents brought a Title IX claim after the assailant was allowed to transfer back to the same high school as the girl he assaulted. His return to school resulted in renewed trauma for the survivor, impacting her performance in school and on her sports team. Thapar minimized the trauma she endured, claiming “While we wish we lived in a world where schools could prevent the kind of *discomfort* [she] suffered, we do not” [emphasis added].

In yet another example, Thapar [voted](#) to reverse a lower court’s decision to allow four victims of sexual assault to bring claims against Michigan State University after their perpetrators were allowed to remain on campus. The victims each stated that the decision to allow the men who assaulted them to remain on campus caused them mental distress and created a hostile environment in violation of Title IX. In his concurring opinion, Thapar admitted that the “allegations in this case are troubling” and acknowledged that the majority opinion was a departure from the approach adopted by its “sister circuits.” However, he agreed with the majority that, to prove a Title IX violation, the student-victim must prove that “the school had actual knowledge of actionable sexual harassment and that the school’s deliberate indifference to it resulted in further actionable sexual harassment against the student-victim which caused the Title IX injuries.” This interpretation makes it extremely difficult for a student to challenge a school’s response to a sexual assault allegation, even where the investigation ultimately finds the allegation to be true but perpetrators are allowed to remain on campus.

Civil Rights

Thapar would have [prevented](#) a woman from bringing a pregnancy discrimination lawsuit under Title VII against her employer who fired her after she became pregnant and then “pressured” her into signing a severance agreement that included waiving civil rights claims. Thapar’s position, rejected by a majority of a Sixth Circuit panel, was that she should be denied legal recourse even though she had returned the severance to her employer.

Thapar also [affirmed](#) dismissal of an African-American state trooper’s racial workplace discrimination claim over a dissent, which highlighted how he created too narrow a test for bringing Title VII cases. Thapar also cast the deciding vote, over a scathing dissent, to [reject](#) a claim that an African American was excluded as a juror in the case of another African-American.

Thapar voted to [reverse](#) a lower court decision that extended the deadline for requesting an absentee ballot for those who had been unexpectedly arrested within three days of an election and were unable to cast their ballot while detained in jail.

LGBTQ Equality

Thapar [rejected](#) a claim of workplace harassment by an employee who had been repeatedly groped and verbally harassed because Thapar believed there was no “credible evidence that the harasser was homosexual.” The victim in the case was an oil rig worker who was sexually harassed until he was forced to leave his job. Thapar argued that, because the employee had failed to prove that his harasser was homosexual, he could not prove that the physical and verbal harassment he experienced was based on his gender. Thapar’s narrow view of same-sex sexual harassment allows workplace predators to go unpunished and was [rejected](#) by [multiple federal courts](#) in similar cases.

Abuse of Authority

Thapar also has a troubling record when it comes to holding authorities, including law enforcement, accountable for constitutional violations.

In one notable example, Thapar wrote a decision [affirming](#) a lower court’s decision to dismiss police brutality after a police officer violently arrested Shase Howse on the front porch of his home. Howse was returning to his home when three police officers pulled up in front of his house and repeatedly asked if he lived there. After he and his mother assured them that he did, the officers threw Howse to the ground, struck him twice, and arrested him. Howse later filed a lawsuit against the officers. Thapar dismissed the claim, holding that it was permissible for the police officers to arrest Howse for obstruction for justice because he had admitted that he protested when the officers attempted to arrest him. In dissent, Judge Guy Cole explained that the officers lacked probable cause to arrest him because responding to questions from the police with a “smart mouth,” as the officer had called it, was not a crime.

In another case, a federal prisoner alleged that prison staff placed him in segregated housing and threatened to transfer him to the lockdown unit in retaliation for grievances he had filed against the prison staff. He also feared for his life if he was transferred to Lewisburg prison, where he had previously served time and where, he alleged, staff members had “viciously assaulted him” and told other prisoners that “Hill was a rat and should be stabbed.” Thapar [dismissed](#) Hill’s complaint as “frivolous” because, he wrote, a prisoner does not have an “inherent constitutional right to avoid a transfer from one prison to another, [or] to remain free of security classifications that would place them in

segregation or specialized housing units.” The Sixth Circuit, in an opinion joined by two George W. Bush appointees, [reversed](#).

As a district court judge, Thapar [ruled](#) for a nurse who knew of a pretrial detainee’s need for diabetic medication but did not provide him with insulin or emergency room care, instead going on a five-day vacation while leaving the detainee without medical care. The detainee died after two days in jail without insulin. Thapar’s ruling was [overturned](#) on appeal.

Thapar [joined](#) an opinion, over a dissent, holding there was no remedy for what all judges agreed was a violation by a sheriff’s deputy of a homeowner’s right to privacy.

Thapar has also joined opinions [reversing](#) a district court ruling that denied qualified immunity for police officers who released a police dog on a suspect after he had already raised his hands up and surrendered; [affirming](#) a ruling that an Akron police officer had qualified immunity and would not face liability for shooting and killing a suspect in the back as he ran away from officers, following a questionable stop and subsequent altercation with police; and [affirming](#) lower court order dismissing a woman’s claim that police improperly used excessive force in shooting and killing her fiancé, whom she was driving to a mental health treatment facility.

Criminal Justice

In a [speech](#) before the Federalist Society, Thapar said that he believes certain sentencing policies do not do enough to punish offenders. Thapar has a [record](#) of troubling opinions, including a case in which he sentenced Sister Megan Rice, an [84-year old nun](#), to jail for almost three years for breaking into a government facility during a pacifist protest.

In 2019, Thapar [joined](#) an opinion that reinstated an erroneous sentence of James Walker, a 65-year-old man who was convicted of possessing thirteen bullets that he had found in a rooming house he managed and removed for safekeeping. The 15-year sentence was based on mistaken interpretation of the Armed Career Criminal Act that resulted in sending Walker to prison for seven years longer than the law required. When Walker requested a rehearing, Thapar and the other five Trump-appointed judges on the Sixth Circuit refused to reconsider the decision, despite a strongly worded dissent by George W. Bush-appointed judge Kethledge, who called on the court to “correct our own mistakes.”

In another case, Thapar would have [upheld](#) the dismissal of a prisoner’s claim that a guard had “brandished a knife” and threatened to kill him on multiple occasions. According to Thapar, the guards repeated threats did not violate the Constitution. A majority of the court disagreed, holding that “unprovoked and repeated threats to a prisoner’s life, combined with a demonstrated means

to immediately carry out such threats, constitute conduct” that violates the Constitution.

Thapar also [dissented](#) from an opinion that held in part that the failure of a defendant’s lawyer to advise him on the risk of deportation stemming from his criminal plea agreement constituted ineffective assistance of counsel. Thapar’s dissent minimized the impact of effective assistance of counsel in plea agreements.

Access to Civil Justice

Thapar would have [denied](#) reimbursement of attorney fees to a person who successfully argued that he was improperly denied disability benefits he was entitled to under law. Thapar’s decision was [reversed](#) on appeal, but if it had stood, his decision would have made it more difficult for attorneys to collect fees, thereby making it more challenging for individuals with limited means to get legal representation and pursue meritorious claims in court.

In 2018, Thapar sat on a Federalist Society Convention panel with Third Circuit judge Thomas Hardiman. Hardiman [announced](#): “If I were able to do something unilaterally, I would probably institute a new federal rule that said that all cases worth less than \$500,000 will be tried without any discovery.” In response, Thapar replied, “Can I say amen?” Such a rule would enable corporations and those who commit wrongdoing to hide critical evidence and deprive those with modest-dollar cases of their ability to argue their case in court, including individuals whose cases involve important rights.

Money in Politics

As a district court judge, Thapar [struck down](#) Kentucky’s ethics rules for judicial candidates, including a ban on judges making political contributions to political parties. If upheld, his legal reasoning would have granted the wealthy and powerful even more influence in our elections. Thapar argued that “direct speech and monetary speech are functional equivalents,” and that strict scrutiny applies to limits on campaign contributions, even though the Supreme Court has always made clear that contribution limits are permissible. His determinations on three key provisions, including the one concerning political contributions, were [overturned](#). The Sixth Circuit, in an opinion by a George W. Bush appointee, emphasized that there is a difference between speech and using money to “assume a role as political powerbroker[.]” and that “judicial candidates... do not have an unlimited right to contribute money to someone else’s campaign.”

Education

Thapar voted to [reverse](#) a Sixth Circuit panel decision that ruled the Fourteenth Amendment's Due Process Clause protects a fundamental right to a "basic minimum education" that is potentially violated when the state fails to provide adequate public schools and foundational literacy. The case involved students at several of Detroit's worst performing public schools, which had missing or unqualified teachers, physically dangerous facilities, and inadequate books and materials.

Immigration

Thapar wrote an opinion [upholding](#) the deportation of Luis Eduardo Cuellar Garcia, an immigrant who had received legal status to remain in the country after a court found that he had fled El Salvador as a child to escape gang violence and he could not return to the country due to "insufficient parental protection." The government relied on a "new, unwritten and informal" policy to justify bringing removal proceedings against Garcia in immigration court, and Thapar agreed with its reasoning over the strong objections of Judge Merritt. Thapar authored an opinion [denying](#) a petition from Veronica Viuda de Mejia, an asylum seeker who had fled El Salvador due to threats of sexual violence, harassment, and an attempted rape by MS-13 gang members. Thapar also joined an opinion [denying](#) an asylum claim from a family who feared they would be targeted for female genital mutilation (FGM) if they were forced to return to Senegal. According to Thapar, the families evidence was "inherently unbelievable," "self-serving," and "speculative."

Environment

Thapar wrote an opinion [reversing](#) a district court ruling that held that a federal agency must comply with the Endangered Species Act and the National Environmental Policy Act before approving plans by an oil pipeline operator to deal with the serious risks of oil spills.