Supreme Court Update: Lomax v. Ortiz-Marque (No. 18-8369)

Well, after clearing the decks last week with five opinions in not-so-high-profile cases, many expected the Court this week to start working through some of the blockbusters on its docket. After all, the trio of cases addressing Title VII’s applicability to sexual orientation and identity were among the first to be argued this term. Instead, we got Lomax v. Ortiz-Marquez (No. 18-8369), a nine-page unanimous decision on the Prison Litigation Reform Act’s “three-strikes rule.”

Maybe not one for the history books, but quite likely the most important decision of the year for Arthur Lomax, along with thousands of other prisoners trying to get their day in court.

The PLRA’s three-strikes rule generally prevents a prisoner from bringing suit in forma pauperis (IFP)—that is, without having to pay filing fees—if he has three or more prior suits “dismissed on the grounds that [they were] frivolous, malicious, or fail[ed] to state a claim upon which relief may be granted.” Lomax sought to file a lawsuit against several prison officials IFP, but he’d already had three prior suits dismissed for failure to state a claim. On appeal, Lomax argued that two of those dismissals shouldn’t count because they were without prejudice. The Tenth Circuit disagreed, entrenching an existing circuit split over whether dismissal without prejudice for failure to state a claim qualifies as a strike under the PLRA.

In line
with our duty to call balls and strikes,” Justice Kagan quipped, “we granted certiorari to resolve the split.”

In a swift opinion—unanimous with the exception of one footnote (more on which below)—Justice Kagan concluded that the resolution of this issue “begins, and pretty much ends, with the text of” the PLRA. Section 1915(g) provides that a prisoner accrues a strike for any action “dismissed on the ground[] that it . . . fails to state a claim upon which relief may be granted.” That broad language, Kagan said, “covers all such dismissals: It applies to those issued both with and without prejudice to a plaintiff’s ability to assert his claim in a later action.” To reach the opposite result, she noted, the court would have to read the simple word “dismissed” as “dismissed with prejudice.” Lomax invoked Rule 41(b) in arguing that dismissals without prejudice shouldn’t count. That rule creates a presumption that a dismissal is with prejudice when a court says nothing. Because Rule 41(b) presumes that an order stating only “dismissed for failure to state a claim” is with prejudice, Lomax argued that the same language when used in 1915(g) should bear the same meaning. Justice Kagan characterized this argument as “backwards.” It’s precisely because the language “dismissed for failure to state a claim” does not reveal whether prejudicial effect is intended that the Rule 41(b) presumption is needed. She also rejected Lomax’s attempt to read “dismissed for failure to state a claim” similarly to the other grounds for strikes—claims that are “malicious” or “frivolous.” Because those grounds connote “irredeemable” defects, the Court should also read “dismissed for failure to state a claim” to be limited to dismissals with prejudice. Justice Kagan rejected the premise that frivolous or malicious claims are always irredeemable and further noted that the PLRA was designed to curtain not only frivolous or malicious claims, but meritless claims as well.

Now, about that footnote. In her opinion, Justice Kagan stated that 1915(g)’s broad language “covers all such dismissals: It applies to those issued both with and without prejudice to a plaintiff’s ability to reassert his claim in a later action.” However, in footnote four, she explained that “the provision does not apply when a court gives a plaintiff leave to amend his complaint,” because, in that instance, “the suit continues, the court’s action falls outside Section 1915(g) and no strike ensues.” If you never really thought there was a difference between a dismissal “without prejudice” and one “with leave to amend,” you’re not alone. In practice, district courts frequently issue decisions dismissing a complaint “without prejudice” and then accept amended complaints in the same case. While counseled plaintiffs may specifically request that a court grant leave to amend, pro se inmates likely have little control over whether a complaint that fails to state a claim is dismissed “without prejudice” or “with leave to amend.” Indeed, at oral argument, Justice Kagan herself questioned why the distinction she identified in footnote four should be so important, given that different courts take different approaches to dismissing without prejudice or with leave to amend. By the time it came to writing an opinion, however, Justice Kagan and seven others were apparently content to leave that concern aside. Justice Thomas, it appears, was not. He joined the entire opinion except footnote four, but did not write separately to explain his reasoning.

That does it for this week. We’re coming up on the home stretch, so we expect more and more decisions in the coming weeks. Stay tuned!