

IN THE SUPREME COURT OF THE UNITED STATES

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No. 18-8369

ARTHUR J. LOMAX, PETITIONER

v.

CHRISTINA ORTIZ-MARQUEZ, ET AL.

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting respondent and that the United States be allowed ten minutes of argument time. Respondent has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

This case presents the question whether under the "three strikes" provision of the Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-66, 28 U.S.C.

1915(g), a district court's dismissal of an action without prejudice for failure to state a claim qualifies as a strike. Section 1915(g) provides that a strike accrues when an action or appeal is "dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." The court of appeals held that a "dismissal for failure to state a claim under Rule 12(b)(6) satisfies the plain text of § 1915(g) and therefore will count as a strike," regardless of whether the dismissal is without prejudice. J.A. 72 (quoting Childs v. Miller, 713 F.3d 1262, 1266 (10th Cir. 2013)). The United States has filed a brief as amicus curiae supporting respondent, contending that the court of appeals' interpretation of Section 1915(g) is consistent with the text, context, history, and purposes of that provision.

The United States has a substantial interest in the resolution of the question presented because it is frequently the defendant in suits that are subject to the PLRA. There are currently more than 175,000 inmates in federal custody, and those inmates frequently file in forma pauperis suits against the United States, the Bureau of Prisons, and prison officials, see Bruce v. Samuels, 136 S. Ct. 627, 630 (2016). Because of its substantial interest in the statute that governs those suits, the United States has participated as amicus curiae in previous cases involving the interpretation of the PLRA. See Coleman v. Tollefson, 135 S. Ct. 1759 (2015); Woodford v. Ngo, 548 U.S. 81 (2006); Porter v. Nussle,

534 U.S. 516 (2002); Booth v. Churner, 532 U.S. 731 (2001); Miller v. French, 530 U.S. 327 (2000). Participation by the United States in oral argument in this case therefore might be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

JANUARY 2020