



## ‘Little guys’ won big at Supreme Court this year

Richard Wolf

July 4, 2017

One of the toughest criticisms leveled against Supreme Court Justice Neil Gorsuch during his confirmation hearings in March was that he frequently ruled against the "little guy."

Not so the Supreme Court — at least, not so much this year.

As Gorsuch was being grilled by Democrats on the Senate Judiciary Committee March 21, the court he soon would join ruled that Elijah Manuel can challenge on constitutional grounds his seven-week detention by Joliet, Ill., police for drug charges that later were dropped.

The next day, as Gorsuch was defending his federal appeals court ruling against a student with autism, Chief Justice John Roberts announced the high court's unanimous decision in favor of another such student — one that struck down the very standard Gorsuch had applied.

Such rulings were the rule at the Supreme Court this term — from an October decision striking down Shaun Bosse's death sentence in Oklahoma over the improper use of victim impact statements to an April verdict in favor of two lesbian couples denied the same rights as heterosexual couples to be listed on their children's birth certificates.

In between, the justices ruled in favor of criminal defendants, death-row inmates, immigrants facing deportation, children with disabilities and others in more than a dozen cases pitting individuals against government authorities. About half the time, their decisions were unanimous.

The rulings represent “a skepticism of the government, which I think probably unites both wings of the court,” said Christopher Landau, an appellate lawyer who won two such cases argued in April. The court, he said, “doesn’t put a thumb on the government’s side of the scale.”

While the number of little-guy victories this term may have been unusual, they were not unique. For several years, the court has pushed back against what it sees as egregious overcriminalization — ranging from a jilted wife's attempted assault prosecution under a chemical weapons treaty to a Florida fisherman's conviction for tossing undersized grouper under a law targeting white-collar destruction of evidence.

### Service dogs and sex offenders

he court ruled in favor of death-row inmates based on racist testimony, intellectual disability and trial procedures. It ruled for criminal defendants victimized by overzealous prosecutors, racist

jurors and ineffective lawyers. It even ordered Colorado to return money paid by people whose convictions were later overturned.

Not all little guys won big. Divna Maslenjak, for instance, merely won the chance to reverse her deportation in lower courts after having lied during naturalization proceedings about something that didn't help her win citizenship.

Others failed to reap the benefits of their victories. Luis Ramon Morales-Santana, born overseas but with an unmarried father who was a U.S. citizen, argued successfully that he deserved the same citizenship rights as the foreign-born child of an unmarried mother who was a U.S. citizen. The court agreed — by raising the bar on mothers, rather than lowering it for fathers.

And some did not win at all. The court ruled against illegal immigrants who challenged their detention and harsh treatment in New York in the days following the 9/11 terrorist attacks, a homeless couple shot and injured by Los Angeles police during a warrant-less search, and a Wisconsin family seeking compensation for development regulations that barred the sale of an adjacent lot.

“Even with this very conservative court, there’s areas where the little guy can win — for now,” said Brienne Gorod, chief counsel at the liberal Constitutional Accountability Center, which filed friend-of-the-court briefs on behalf of four plaintiffs.

But Gorsuch, she noted, "has been everything the conservatives wanted him to be," which could make similar cases harder to win in the future.

### Choosing slam-dunks

Beyond a healthy skepticism of government authority, several factors likely drove the court to hear appeals from little guys and rule in their favor this term:

- Several cases raised claims under the Fourth Amendment, which protects citizens from unreasonable searches and seizures, or the First Amendment's freedom of speech guarantee — including a trademark dispute brought by The Slants, an Asian American dance rock band from Portland, Ore.

“This is a court that is solicitous of individual constitutional rights," Landau said. "It’s pretty rare that they get a First Amendment claim that they don’t uphold.”

- The 64 cases heard were selected by an eight-member court following the death of Justice Antonin Scalia in February 2015. Faced with an even number of votes, the justices were hunting for disputes that would not produce 4-4 deadlocks.

“They were most solicitous to cases that looked like they’d be easy ones to agree on —cases where the lower court was quite probably wrong,” said Jeffrey Fisher, a Stanford law professor who argued four cases during the term.

- The high court's elite bar, along with Supreme Court law clinics at top law schools, successfully petitioned the justices to hear their cases.

“If you’re a little guy, getting the court to take your case isn’t most of the ballgame,” said Ilya Shapiro, senior fellow at the Cato Institute, a libertarian think tank that filed briefs in several of the cases. “It’s the whole ballgame.”

And then there is the justices' sense of responsibility as the ultimate backstop for those treated wrongly by the legal system.

Said Jeffrey Green, national co-chair of the Amicus Committee of the National Association of Criminal Defense Lawyers: “The Supreme Court of the United States does, to a certain extent, view itself as the last opportunity for litigants to achieve justice.”