

No. 09-1233

IN THE
Supreme Court of the United States

GOVERNOR ARNOLD SCHWARZENEGGER, et al.,

Appellants,

v.

MARCIANO PLATA AND RALPH COLEMAN, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURTS
FOR THE EASTERN DISTRICT OF CALIFORNIA AND
THE NORTHERN DISTRICT OF CALIFORNIA

**BRIEF OF CORRECTIONS AND LAW
ENFORCEMENT PERSONNEL *AMICI
CURIAE* IN SUPPORT OF APPELLEES**

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INTEREST OF *AMICI CURIAE*

Amici Curiae include twenty-seven individuals with decades of experience in the fields of corrections and law enforcement.¹ Among this distinguished group of *amici* are:

Allen Ault, Former Commissioner, Georgia, Mississippi, and Colorado Department of Corrections;

Allan Breed, Former Director, California Youth and Adult Correctional Authority;

Robert Brown, Jr., Former Director, Michigan Department of Corrections;

A. Bates Butler, III, Former U.S. Attorney for the District of Arizona; Former First Assistant U.S. Attorney, District of Arizona; Former Deputy Pima County Attorney;

Terry Collins, Former Director, Ohio Department of Corrections;

Kathleen Dennehy, Former Commissioner, Massachusetts Department of Corrections;

Robert J. Del Tufo, Former New Jersey Attorney General; Former U.S. Attorney, District of New Jersey; Former First State Attorney General and Director of New Jersey's Division of Criminal Justice;

1. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici*, or their counsel, made a monetary contribution intended to fund its preparation or submission.

Doug Dretke, Executive Director, Correctional Management Institute of Texas;

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Daniel F. Goldstein, Former Assistant U.S. Attorney for the District of Maryland;

Michael Hennessey, Sheriff, San Francisco County;

Gary Johnson, Former Director, Texas Department of Corrections;

Perry Johnson, Former President, American Correctional Association;

Kip Kautzky, Former Director, Colorado and Iowa Department of Corrections;

Thomas D. Lambros, Former Judge, U.S. District Court for the Northern District of Ohio; Chief Judge (1990-1995);

Joseph Lehman, Former Director of Corrections, Washington, Maine, and Pennsylvania;

Steve Martin, Former Corrections Official, Texas Department of Corrections; Former General Counsel, Texas Department of Corrections;

Vincent Nathan, Professor, University of Toledo; Special Master, Northern District of Ohio, Southern District of Georgia, District of New Mexico, District of Puerto Rico, Southern District of Texas;

Robert O'Connor, Jr., Former Judge, U.S. District Court for the Southern District of Texas, Captain, Judge Advocate General Corps, U.S. Army Reserves (1958-1969);

Stephen M. Orlofsky, Former Judge, U.S. District Court for the District of New Jersey; Former Magistrate Judge, U.S. District Court for the District of New Jersey; Captain, U.S. Army;

Wayne Scott, Former Director, Texas Department of Corrections;

Norm Stamper, Former Police Chief, San Diego and Seattle;

William S. Sessions, Former Director, Federal Bureau of Investigations; Former Judge, U.S. District Court for the Western District of Texas; Chief Judge (1980-1987); Former U.S. Attorney, Western District of Texas;

William Sturgeon, Corrections and Law Enforcement Consultant;

Jeanne Woodford, Former Director, California Department of Corrections.

Among the group are eleven former directors of the departments of corrections of twelve states, including California, Colorado, Georgia, Iowa, Maine, Massachusetts, Michigan, Mississippi, Ohio, Pennsylvania, Texas, and Washington. *Amici* include five former prosecutors and six former federal judges. Also represented are current and former police officers from the State of California and former corrections officials from the State of Texas. The group also includes a corrections and law enforcement consultant, a criminal justice professor and special master for numerous federal corrections cases, and the former president of the American Correctional Association.

Amici also include the American Justice Institute, which was created in 1958 by world recognized correctional leaders and has been a source of independent information and policy recommendations for California correctional decisionmakers since its creation.

The bulk of the *amici* have direct ties to the California state prison system, both in terms of actual work experience and from having served as consultants to the CDCR in its internal reviews. They recognize the grave Eighth Amendment violations taking place within the State of California's prison system and understand, based on their decades of experience, that a crowding reduction order is necessary to remedy the ongoing constitutional violations. Further, *amici* are confident that crowding can be reduced without

jeopardizing public safety. Therefore, *amici* present this brief in support of the appellees.

SUMMARY OF ARGUMENT

The order of the three-judge court requiring the State of California to limit prison populations to 137.5% of their capacity within two years is both a necessary and reasonable means to address the ongoing violations of California inmates' Eighth Amendment rights. Uncontrolled prison overcrowding in the California Department of Corrections and Rehabilitation (CDCR) system has, *inter alia*, denied inmates access to constitutionally-guaranteed levels of healthcare services. Despite repeated attempts by the CDCR and Governor Arnold Schwarzenegger to address the issue, no meaningful reductions in overcrowding have occurred to date.

When a prison population is allowed to expand so far beyond prison capacity, the effect is analogous to cancerous cells metastasizing in a healthy body. As the inmate population soars, the destructive effects are felt throughout the system – tensions rise for inmates, correction officers, and staff; violence increases; rehabilitation efforts are compromised; care for inmates is reduced; organizational ability is lost; the morale of both correctional staff and inmates plummets. In short, chronic overcrowding makes prison systems unmanageable, unsafe, and inhumane.

At its most basic level, overcrowding dilutes the scarce essential resources available inside a prison system. The number of cells and dormitories in the

California prison system are insufficient to meet prisoner demand, so prisoners are bunked three high in classrooms, laundry rooms, gymnasiums, and hallways. These spaces were never intended for the long-term housing of prisoners, nor are they suitable for the task.

Improvised housing areas like gyms and hallways make the work of correctional staff far more difficult and dangerous. Prisoners housed in such settings cannot be monitored effectively for health or disciplinary purposes. Placing too many prisoners in too small a space for too long without any effective means for monitoring prisoners and segregating the ill will inevitably lead to a heightened rate in the transmission of sickness and disease. Correctional staff charged with controlling these overcrowded environments are put at greater risk for infections and other health problems. In the event of a widespread prisoner disturbance or riot – the nightmare scenario in any correctional setting – these improvised confinement areas create an intolerably high risk of physical harm and death for correctional staff and inmates alike.

Chronic overcrowding not only forces prison systems to house prisoners in unsuitable areas – it also deprives the prison systems of the functions for which these spaces were originally intended. As a result, the prison system is doubly punished for overcrowding. Once a classroom or gymnasium is repurposed to house a prisoner population that exceeds planned capacity, there is less rehabilitative space available to the prison population – but even *more* inmates in need of such space. A growing inmate population will thus outstrip the system's available rehabilitative spaces at a

significantly faster rate than even the growth rate for the inmate population. The loss of classroom and recreational space leads directly to a reduction in the availability of educational and other rehabilitative programs.

Chronic overcrowding's dilution of needed space and resources is only the outward manifestation of a larger problem. Close, crowded sleeping quarters, curtailment of rehabilitative programs, and the spread of sickness all work to dramatically lower the morale of an inmate population. This psychological effect does not require years of expert study to understand (although such studies have of course been done) *see* Gerald G. Gaes, *The Effects of Overcrowding in Prison*, 6 Crime and Justice 95 (1985) – just imagine having no personal space at any time, being forced to interact with dangerous strangers on a constant basis, being quarantined with the sick and diseased without adequate medical attention, and having few or no constructive outlets for your ambitions or your desire to improve your lot. Inmates in such a situation lose any hope for the prospect of rehabilitating themselves, becoming functioning members of society, or even making it out of prison alive and healthy. Inmates without hope or any constructive outlet for their energy will create more disciplinary problems and often become more violent. *Amici* have seen firsthand the demoralizing effect of chronic overcrowding and its resultant dangers.

Amici also have witnessed the lowered morale of correctional staff in the face of overcrowding. The role of the correctional officer depends fundamentally on the ability to maintain order. Overcrowding makes order

more difficult to achieve. Chronic overcrowding can make maintaining order impossible. Without the ability to first create and maintain an orderly environment, the correctional officer cannot properly perform the other tasks within her purview. At the same time, the performance of these tasks becomes increasingly dangerous to the correctional officer. A correctional officer working in a chronically overcrowded environment will become more frustrated, tenser, and less invested in her work. Again, psychological studies are not required to understand this phenomenon – just imagine going to a job that did not contemplate success, but only incremental failure, and one that was physically dangerous as well. California’s inability to retain needed CDCR staff is a testament to the demoralizing effect that chronic overcrowding has had on the State’s correctional staff.

Chronic overcrowding is a cancer in the California prison system. It threatens the stability of the system and deprives those in it, both inmates and staff, of the resources and conditions necessary for success. *Amici* have seen the deleterious effects of chronic overcrowding. These effects are felt everywhere and at all times in the California system, but they are felt no more acutely than in the provision of medical and mental health care to inmates.

ARGUMENT

I. Prison overcrowding is a systemic threat to California prisons and the root cause of the constitutional deficiencies in the CDCR's provision of medical and mental health care to inmates.

As former corrections and law enforcement officials with combined decades of experience in correctional matters, *amici* have seen firsthand the harm caused by chronic overcrowding. Prison overcrowding is not simply another deficiency in the California prison system – it is the root cause of almost all the problems the CDCR faces. The direct causal relationship between overcrowding and the grievous state of medical and mental health care in the CDCR is undeniable.

The constitutional deficiencies in the CDCR's provision of medical and mental health care to inmates are well-established. It should be equally well-established that the unconstitutional deprivation of medical and mental health care services is the direct result of chronic overcrowding in California prisons. *Amici* have decades of firsthand experience overseeing entire prisons, including the provision of medical and mental health care to inmates. *Amici* have also witnessed the systemic harm caused by chronic overcrowding. For those with experience in the world of corrections, it is beyond cavil that overcrowding is the primary cause of the CDCR's constitutionally inadequate medical and mental health care.

The State does not contest the record's damning facts on the effects of overcrowding on medical and

mental health care services in the CDCR: overcrowding prevents the proper screening of new inmates, resulting in undiagnosed medical and mental health conditions, JS1-App.87a-89a; overcrowding delays emergency response, or prevents it altogether, causing death, JS1-App.110a-111a; overcrowding increases the transmission of disease, JS1-App.101a-102a; overcrowding interferes with the distribution of medication to patient-inmates, JS1-App.112a-114a; overcrowding results in too few medical facilities to handle the inmate population in need of medical services, JS1-App.85a-95a; overcrowding has resulted in insufficient appropriate housing for inmates in need of medical attention, JS1-App.95a-97a.² That overcrowding negatively impacts healthcare services provided by the CDCR simply is undeniable.

California is far from the only state to have faced this issue, and the lessons learned in other jurisdictions are telling. When the Pennsylvania corrections system reached 150%-160% of capacity, overcrowding significantly affected the state's ability to provide adequate healthcare. Tr. 209:12; 210:1-5 (Beard). Only when crowding decreased, could Pennsylvania provide better healthcare to its inmates. *Id.* at 210:13-14 (Beard). Texas, too, has faced issues with prison overcrowding. As *amicus* Wayne Scott, former head of the Texas

2. Cites to "JS1-App." refer to the appendix filed by appellants in Case No. 09-416. Cites to "JS2-App." refer to the appendix filed in support of appellants' Jurisdictional statement in this case. The record in *Plata*, No. C01-1351-TEH (N.D. Cal.) is cited by docket entry (*i.e.*, "D.E. __"). Trial transcripts are cited as "Tr." and trial exhibits are cited by party and number (*i.e.*, "Def. Ex. __" and "Plf. Ex. __").

Department of Corrections, testified, overcrowding was once such an extreme and pervasive plague on the Texas prison system that it was deemed to constitute cruel and unusual punishment. *Id.* at 142:22-25 (Scott). Prior to undergoing two decades of court-ordered reforms, the Texas prison system reached capacity levels of 200%, which resulted in a dismal medical and mental healthcare system. *Id.* at 143:1-9 (Scott). As Mr. Scott testified, many of the same problems that existed in Texas exist now in California. *Id.* at 143:21-22 (Scott). Had the population remained unchecked, the Texas prison system would not have been able to remedy the constitutional violations relating to the inadequate delivery of medical and mental healthcare. *Id.* at 152:19-153:6 (Scott). Given the experiences of Texas and Pennsylvania, it is clear that population reduction is essential to remedying the current medical and mental healthcare crisis in California's prison system. *Id.* at 153:7-11.

Sadly, most of these problems are not new. Studies have been previewing the crisis in prison healthcare for decades. See Terence P. Thornberry and Jack E. Call, *Constitutional Challenges to Prison Overcrowding: The Scientific Evidence of Harmful Effects*, 35 *Hastings L.J.* 313 (Nov. 1983). Of particular concern is the CDCR's inability to effectively screen incoming prisoners – an essential component in maintaining a healthy and safe prison population. Overcrowded prison systems simply do not possess the resources to systematically screen and assess new inmates for medical and mental health problems. But even if new inmates could be properly assessed by correctional staff, the CDCR lacks the resources to provide prisoners with the needed

treatment. Again, this crisis has long been foretold: “Unfortunately, the prospect of screening inmates for mental disorder and treating those in need of mental health services has become a daunting and nearly impossible task in the present explosion of prison growth.” F. DiCataldo, A. Greer, & W. Profit, *Screening Prison Inmates for Mental Disorder: An Examination of the Relationship Between Mental Disorder and Prison Adjustment*, 23 *Bulletin of the American Academy of Psychiatry and Law* 573, 574 (1995).

Chronic overcrowding also results in unsanitary conditions where too many inmates are confined in too small a space. The spread of communicable disease and sickness become much more difficult to stop in such an environment. This is particularly true when prison systems run out of space to segregate healthy inmates from those known to be ill.

Once again, correctional officers have witnessed the effects of overcrowding and unsanitary conditions firsthand, and they are often put at risk by such conditions. According to the testimony of Gary Benson, a correctional officer at Folsom State Prison, “as many as 50 inmates at a time typically wait two to five hours inside a 12 by 20 foot holding area for medical or mental health treatment.” Tr. 597:25-600:25 (Benson). He testified that he also regularly sees inmates in communal showers with bleeding, oozing, staph infections. *Id.* at 601:14-602:8; 603:23-604:24. Benson also testified that he contracted an antibiotic-resistant staph infection in July 2006 at one of the CDCR prisons. *Id.* at 605:1-606:4. Inmates with such infections are not segregated and these diseases almost always spread in

prison. Only California's chronic prison overcrowding explains these outrageous conditions.

This litany of health deficiencies caused by overcrowding should be considered unacceptable from the standpoint of prison management. That the CDCR has been operating under these conditions for almost two decades is at once appalling and dispiriting to anyone with experience in and concern for our state prison systems. It is indicative of what has been called the California prison system's "ignoble distinction of systemic failure." Plf. Ex. 3, Letter from Chairman Michael E. Alpert to Governor Schwarzenegger and the California State Legislature. Dramatic action must be taken to strike at the heart of the two-decades-old broken health care system maintained by the CDCR. Taking steps to reduce California's inmate overcrowding is the only way back to a manageable prison system.

II. The conventional political system has failed to remedy the ongoing constitutional violations caused by the longstanding and persistent overcrowding of the California prison system.

As repeatedly noted by lead defendant Governor Arnold Schwarzenegger, the California prison system is seriously and dangerously overcrowded. In his October 2006 "Prison Overcrowding State of Emergency Proclamation," Governor Schwarzenegger warned that this overcrowding creates "conditions of extreme peril to the safety of persons and property." Plf. Ex. 1 at 8. All thirty-three CDCR prisons are at or above maximum operational capacity. *Id.* at 1. As

Governor Schwarzenegger proclaimed, “immediate action is necessary to prevent death and harm caused by California’s severe prison overcrowding.” Plf. Ex. 1 at 6. Conditions are so bad that Governor Schwarzenegger declared a State of Emergency within the California prison system, a State of Emergency which remains in place today. *Amici* could not agree more with the Governor Schwarzenegger’s assessment of the dire state of the CDCR.

A. Extreme overcrowding is a longstanding problem in the State of California prison system.

When Ronald Reagan was governor of California, the prison population was approximately 27,000 inmates. Since that time, the prison population has mushroomed. Until the 1980’s, the California prison population increased at a relatively slow pace, with the population growing by an average of 500 inmates per year. Plf. Ex. 3 at 17. However, the population surged from 27,916 in 1980 to 99,145 in 1990, and the influx continued with the population reaching 161,000 in 2000. *Id.* at 18. From 1980 to 2006, the inmate population in California swelled 600%, increasing by an average of 5,500 inmates per year. *Id.* at 17.

By 2006, through a combination of factors, including population increases, sentencing laws, and parole policies, the total number of inmates reached an all-time high of 170,000. Plf. Ex. 1 at 1. In 2007, the CDCR convened an Expert Panel on Adult Offender and Recidivism Reduction Programming (hereinafter “CDCR Expert Panel”) to examine ways to reduce

recidivism by changing offender behavior. *See generally*, Plf. Ex. 4. After studying all aspects of recidivism, the Expert Panel's first recommendation to the California legislature was to reduce the dangerous overcrowding in California's prison facilities. *Id.* at viii. At that all-time peak, the CDCR was housing 172,385 prisoners in facilities designed to hold half that amount, with 18,000 inmates being housed in areas meant for programming and rehabilitation activities. *Id.* At a time when the largest prison in the CDCR system had a design capacity of 3,900 inmates, there were fourteen CDCR prisons housing over 5,000 inmates. Plf. Ex. 1 at 2-5. *See, also*, Department of Corrections and Rehabilitation, *Monthly Report of Population* (June 30, 2007), http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TPOP1A/TPOP1Ad0706.pdf. Several, in fact, held upward of 7,000 inmates. Tr. 213:25-214:10 (Beard).

California, to its credit, has convened more than a dozen blue ribbon panels over the past twenty years to examine its prison system. Each panel has concluded that the State must reduce prison crowding. JS1-App. 55a. However, the calls to reduce crowding have been largely ignored and the crowding worsened. As of September 30, 2010, the CDCR population was well over 164,000, barely dropping from its 2007 peak. Department of Corrections and Rehabilitation, *Monthly Report of Population*, (September 30, 2010), http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TPOP1A/TPOP1Ad1009.pdf. According to a recent report by the United States Department of Justice, only Alabama rivals California's excess of inmate population relative

to design capacity. U.S. Department of Justice, *Bureau of Justice Statistics Bulletin* at 44 (June 30, 2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>. California's outlier status demonstrates the need for a drastic reduction in percentage capacity.

B. Lead defendant, Governor Arnold Schwarzenegger, agrees that overcrowding in California's prisons results in conditions that threaten the health, safety, and effectiveness of the California prison system as well as pose a danger to the community at large.

Uncontrolled overcrowding in the California prison system poses such a threat to the health and wellbeing of inmates and CDCR staff that in 2006 lead defendant Governor Arnold Schwarzenegger issued a Prison Overcrowding State of Emergency Proclamation. *See generally*, Plf. Ex. 1. The *amici* share the Governor's distress and dismay at the state of overcrowding in the California state prison system. As *amicus* Joseph Lehman, the Former Director of Corrections for Washington, Maine, and Pennsylvania, testified, space that would "otherwise [be] program space, such as education space, [was] filled with inmates in terms of dormitories, as well as recreations, gyms filled with beds and bunkbeds." Tr. 268:13-17 (Lehman). The level of overcrowding shocks even those *amici* that have previously grappled with overcrowded systems. *Amicus* Wayne Scott emphasized that "I have been in a lot of jurisdictions over the last five years, and I haven't seen this level of overcrowding in any of those jurisdictions." Tr. 144:23-25 (Scott).

Overcrowding poses a threat not only to the inmates, but also to the men and women who work inside the prisons. Plf. Ex. 1 at 1. The threats identified by Governor Schwarzenegger included the “increased and substantial risk of violence”. *Id.* Tight quarters also impair the ability of the corrections officers to monitor the activities of prisoners. *Id.* at 2. In his 2006 Proclamation, Governor Schwarzenegger identified the overwhelming number of acts of violence both within the inmate population and against the CDCR staff that resulted from overcrowding. In 2005 alone, there were 2,642 acts of violence perpetrated by inmates against other inmates and 1,671 incidents of violence against CDCR staff. *Id.* at 6. Governor Schwarzenegger cautioned that similar overcrowding has led to deadly prison riots, a warning that rang true when California experienced prison riots in both 2008 and 2009.

It should come as no surprise that prison overcrowding results in increases in violence. Fights break out because inmates are constantly forced into tight quarters a result of the limited space. Inmates must compete for the limited toilet, shower, and sink facilities, often resulting in violence when basic hygienic needs must be met. As noted by *amicus* Wayne Scott, “decades of experience have demonstrated to me that close physical proximity, lack of adequate supervision, and competition for scarce resources are a recipe for violence in high-pressure prison settings.” D.E. 1714-9 ¶ 32.

In addition to the threat of violence posed by significant and chronic overcrowding, overcrowding also subjects California prisoners to a high risk of serious injury and death because of the appalling health care

system within California's prisons. Signs and symptoms of serious medical conditions are left unidentified because of overcrowding at prison reception centers. JS1-App. 87a-90a. The failure to properly treat and examine inmates continues inside the prison system due to overwhelmed medication management systems and medical records systems. JS1-App. 112a-114a, 118a-121a. Moreover, the limited medical staff simply cannot provide for the vast inmate population. JS1-App. 104a-109a. As *amicus* Joseph Lehman testified, overcrowding creates a "situation where the demand significantly outstretches the ability to respond to the healthcare needs, both in terms of timing and actual service." Tr. 270:15-17 (Lehman).

Overcrowding also delays and severely restricts the emergency response of prison staff to medical emergencies, leaving inmates vulnerable to both illness and violence. JS1-App. 110a-111a. As recounted by *amicus* Jeanne Woodford, former director of the California Department of Corrections, an inmate died from wounds incurred in the middle of a crowded gymnasium because the crowd prevented prison staff from knowing about the injury for several hours, let alone enabling them to provide emergency medical aid. Tr. 382:14-383:3 (Woodford).

The severity of the problem is not in dispute. Governor Schwarzenegger, *amici*, and most other rational observers agree that "immediate action is necessary to prevent death and harm caused by California's severe prison overcrowding." Plf. Ex. 1 at 6. *Amicus* Wayne Scott describes the epidemic of overcrowding as presenting a "crisis management

situation.” Tr. 144:9 (Scott). Governor Schwarzenegger recognized that “the overcrowding crisis gets worse with each passing day, creating an emergency in the California prison system.” Plf. Ex. 1 at 8. He declared that “conditions of extreme peril to the safety of persons and property” exist in the CDCR prison system “due to severe overcrowding, and that the magnitude of the circumstances exceeds the capabilities of the services, personnel, equipment and facilities” of the CDCR. *Id.*

C. The State of California has been unable to relieve prison overcrowding or to bring the California prison system into compliance with the Eighth Amendment.

Despite nearly two decades of judicial and political uproar over the excessive crowding in the California prison system, the State of California has failed to remedy the system’s Eighth Amendment violations. The California district court first found widespread violations of the Eighth Amendment in the delivery of mental health care fifteen years ago. JS1-App. 292a. In December 1995, the court appointed a Special Master to oversee the mental health care system within the California prison system. JS1-App. 288a. Since that time the court has entered over seventy-five substantive orders to bring the CDCR healthcare system into compliance with constitutional requirements. JS1-App. 292a. However, the system remains woefully short of meeting the requirements of the Eighth Amendment.

In 2002, California conceded that it had not remedied the violations to prisoners’ Eighth Amendment rights and agreed to judicial oversight of the prison medical

system. D.E. 68 ¶29. The State also agreed to undergo remedial measures in the 33 CDCR prisons. D.E. 68 at 3-4, 8-9. By 2004, the situation remained stagnant and the State agreed to further court-ordered relief, including efforts to reduce staffing shortages. D.E. 229. Despite court intervention, by mid-2005, “not a single prison” had complied with the 2002 remedial plan, and the State had utterly failed to comply with the 2004 order to add staff. D.E. 294 at 3. Citing the State’s failure to bring the prison medical system up to constitutional standards, the district court put the prison medical care system into receivership in late 2005. D.E. 371 at 1-2.

The Receiver took office in April, 2006, at a time when the California prison system was at 200% capacity. JS1-App. 29a, 60a. The Receiver has acknowledged that overcrowding has “especially adverse consequences concerning the delivery of medical, mental health and dental care” and interferes with his ability to “successfully remedy the constitutional violations.” JS1-App. 86a. That same year, prior to declaring the State of Emergency, Governor Schwarzenegger put forth two proposals to the California Legislature to address overcrowding, as well as called the Legislature into special session to review proposals from the CDCR. Plf. Ex. 1 at 8. The Legislature failed to act upon either of these proposals and failed to adopt any proposals of its own. *Id.*

In 2007, 2008, and 2009, the California district court gave the State every option to reduce overcrowding. JS1-App. 63a, 69a-70a, 286-287a; D.E. 2066. In 2009, Governor Schwarzenegger again attempted to alleviate inmates’ Eighth Amendment violations, this time by

proposing to reduce the prison population by 37,000 inmates over two years. D.E. 2258 at 9-10. Despite the pleas from the courts and Governor Schwarzenegger, the California Legislature refused to act.

The three-judge California district court entered its crowding reduction order only after countless attempts by the conventional political system failed to reduce crowding on its own. *Amici*, with their decades of experience, do not see a solution to the current Eighth Amendment violations in California's prison system that does not involve a reduction in prison population.

III. The three-judge district court order takes a measured and reasonable approach to remedying the constitutional violations arising out of overcrowding in California's prison system.

The order of the three-judge court requiring the State of California to cap prison populations at 137.5% of their capacity within two years is a measured and reasonable way to address violations of California inmates' Eighth Amendment rights. By reducing overcrowding, the order all but ensures that inmate access to CDCR healthcare services will improve, and likely will result in improvements in the quality of such healthcare. Importantly for *amici*, the order does not dictate what remedial measures the CDCR must take, but rather provides the CDCR with the flexibility to take the reasonable steps necessary to reduce inmate overcrowding without negatively impacting the operations of the State prison system or public safety. Moreover, absent the three-judge court's order, it is clear that nothing will be done to remedy the ongoing Eighth Amendment violations.

A. The three-judge court order allows the State of California ample flexibility to manage its prison system.

As *amici* well know, prison systems are highly complex institutions tasked with creating safe conditions for both prison employees and inmates, all the while ensuring that prisons fulfill their primary mandate to secure inmates within facility confines. This all must be achieved with limited resources in an environment that often is volatile and hostile. Moreover, the challenges faced by prison systems vary from facility to facility, meaning that prison administrators must have the flexibility to address issues in a manner best suited to a particular system or prison.

The three-judge court's order gives the CDCR the flexibility it needs to reduce overcrowding and remedy its violations of inmates' Eighth Amendment rights in ways that make the most sense for each facility. While the lower court caps CDCR prison population at 137.5% of prison capacity, it does not in any way seek to prescribe how the State of California should go about reducing prison overcrowding. JS1-App. 169a, 175a-185a. Further, the three-judge court refrained from dictating the population levels at individual prisons. This enables the State to pursue all available options to meet the court's order.

The State of California has already spent significant time and resources exploring options for reducing overcrowding. Plf. Ex. 1. According to the State's own studies, there are multiple ways that CDCR can comply with the three-judge court's order. For example, prisoners can be transferred to out-of-state or federal

correctional facilities, so long as proper procedures are followed. JS1-App. 160a. California can also construct new, or expand existing, prison facilities to relieve overcrowding.

In addition, there are a number of policy options available to the State and CDCR that can help reduce overcrowding. For example, the State can provide additional incentives for communities to assist felony probationers abide by the terms of their probation, thereby reducing the rate of recidivism. D.E. 2258 at 3-4. The State can also provide prisoners with additional opportunities to reduce their sentences through good behavior. Additionally, recidivism rates can be reduced by prohibiting CDCR from returning certain low-risk parolees to prison for minor parole violations. Each of these options, or a combination thereof, are available to help CDCR meet its obligations to reduce prison overcrowding. The three-judge court's order allows CDCR to decide which options are best to achieve the ordered reductions in overcrowding.

Notwithstanding the flexibility provided in the three-judge court's order, the State argues that the order is not "narrowly drawn" and is not "the least intrusive means necessary to correct the violation." State Br. 40. *Amici* reject the notion that a more "narrowly drawn" order will provide a less intrusive means of reducing overcrowding. Any order that requires the State to take specific actions – rather than simply setting inmate population caps – will undoubtedly intrude on CDCR's ability to address the Eighth Amendment violations in ways that make the most sense for CDCR facilities.

Courts are not well suited to make policy decisions on which prisons should be expanded, which healthcare professionals should be hired or which parole policies should be enacted. That is best left to state legislators and prison officials, and that is exactly what the three-judge panel did: it set a goal that the evidence shows will remedy the Eighth Amendment violations and left the State and the CDCR to work out the specific ways that it will achieve that goal. Any order more constrictive would bind prison officials to court-mandated actions that may not be appropriate for certain CDCR facilities, and could, in fact, negatively impact public safety if the State were forced to comply with the terms of an overly-detailed court order that might not be appropriate under the circumstances.

B. The three-judge court order will alleviate the CDCR's violations of inmates' Eighth Amendment rights.

The order of the three-judge court requiring the State of California to cap prison populations at 137.5% of their capacity within two years will remedy the Eighth Amendment violations suffered by individuals incarcerated in the CDCR system by improving prisoner access to quality medical and mental health services. *Amici*, through their knowledge and experience with both state correctional systems and the federal prison system, have reason to believe that the 137.5% target selected by the three-judge panel is reasonable. As demonstrated above, the primary cause of the violation of prisoners' Eighth Amendment rights is overcrowding in the CDCR system. By reducing overcrowding at the CDCR facility level, the three-judge court's order will

reduce demand proportionally for healthcare services at those facilities. Reduced demand will improve access to healthcare providers at CDCR facilities by reducing the overwhelming numbers of prisoners at each facility seeking assistance from limited healthcare resources. Concomitantly, the reduction in demand will improve the quality of healthcare services by enabling CDCR healthcare providers to spend additional time assessing, diagnosing, and treating individual inmates.

Reduced overcrowding will improve the quality of healthcare services at CDCR facilities in a number of ways. Often, a prisoner's first exposure to the CDCR healthcare system occurs at a prison facility's reception center. This is where, in theory, CDCR healthcare providers would assess known and potential medical and mental health conditions; however, as the lower court found, "[c]rowding of reception centers at levels approaching 300% design capacity prevents the state from identifying the medical problems of entering inmates, and makes it impossible to provide necessary medical and mental health care to incoming inmates, who routinely remain in reception centers for more than sixty days and may serve their entire sentence there." JS1-App. 141a. As a result, prisoners' "health needs are not identified" and "cannot be treated." JS1-App. 89a. This is a significant issue, as the failure to identify "potentially serious signs and symptoms" is a leading cause of prisoner deaths. Exh. Def. Ex. 1107 at 6-8. In other words, reducing overcrowding at CDCR reception centers not only would improve access to quality healthcare, but would result in reductions in prisoner deaths – the ultimate goal of any healthcare system.

Overcrowding also detrimentally impacts the provision of healthcare services beyond the initial screening. At the most basic level, prison overcrowding creates a situation where the demand of inmates for healthcare resources outstrips supply. Such has been the case in the California prison system for years. JS1-App. 142a. There simply are not enough healthcare providers at CDCR facilities to adequately assess and treat inmates. JS1-App. 104a-109a. By reducing overcrowding, prison staff will be able to spend more time diagnosing and treating individual inmates, which undoubtedly will improve the quality of care afforded to such individuals.

By reducing overcrowding, CDCR will also help address another fundamental issue that restricts inmate access to quality healthcare: the high vacancy rate in CDCR healthcare positions. Healthcare professionals in California simply do not want to work in the overcrowded and dangerous CDCR system. JS1-App. 154a. For that reason, the three-judge court concluded, and *amici* concur, that ordering the State to complete additional hiring, without reducing overcrowding, would be ineffective. JS1-App. 154a-155a. By reducing overcrowding, and improving security, CDCR can begin to fill some of the vacancies in prison healthcare positions, which, too, will improve inmate access to healthcare.

Reducing overcrowding at CDCR facilities will also help to alleviate physical impediments to providing constitutionally adequate healthcare – namely, the lack of space in which to diagnose and treat inmates. As the three-judge court noted, “. . . CDCR’s facilities lack the

physical space required to provide medical and mental health care.” JS1-App. 154a-155a. By reducing the number of prisoners at CDCR facilities, prison staff can reclaim common areas of prison facilities that have been converted into makeshift dormitories to accommodate severe overcrowding. These common areas can then be converted either back to, or into, healthcare facilities available to treat prison inmates.

In addition to the direct effects that reductions in overcrowding will have on the provision of health services at CDCR facilities, there are numerous indirect impacts that will improve healthcare conditions in the CDCR system. For one, reduced crowding leads to better prison security, which in turn results in fewer violent incidents resulting in injury. Overcrowding also results in prison administrators making increased use of lockdowns to control prison populations. JS1-App. 116a-117a. When a prison is in lockdown, inmates may be unable to leave their housing units for any reason, including to obtain treatment at prison medical facilities. In 2006, CDCR facilities had 449 lockdowns, which averaged 12 days per lockdown, including 20 lockdowns that were 60 days or longer. JS1-App. 116a. These lockdowns – necessitated in most cases by overcrowding – severely impact the ability of CDCR to adequately address inmate healthcare needs. Further, *amici* know first-hand that prison lockdowns are a daily challenge to the CDCR, both in terms of resources utilized to ensure compliance and as disruptive to the goal of rehabilitation. Plf. Ex. 4, Appx. F at 101.

In sum, reducing overcrowding will reduce the primary cause of California’s failure to provide inmates

with constitutionally adequate mental and medical healthcare. The order of the three-judge court capping CDCR's prison population at 137.5% of capacity will reduce overcrowding to levels sufficient for CDCR to ensure that prisoners are able to access constitutionally guaranteed healthcare services.

C. The three-judge court order gives substantial consideration to public safety.

Amici have dedicated their careers and, in many cases their lifetimes, to the protection of the public. Under no circumstances would *amici* file this brief in support of the three-judge court's order if that order did not properly consider public safety and the proper operations of the criminal justice system. As such, the *amici* are confident that the court's order is consistent with the promotion of public safety.

The trial record is replete with evidence that CDCR can reduce prison overcrowding, and remedy the violations of California inmates' Eighth Amendment rights, without adversely impacting public safety. JS1-App. 185a-256a. The three-judge court dedicated nearly ten days for trial, heard from dozens of witnesses, including several of the *amici*, and considered hundreds of exhibits related to this issue. JS1-App. 185a-186a. Certainly the lower court adequately considered the issue of public safety.

Moreover, by leaving it up to the CDCR to determine how best to achieve reductions in overcrowding, the three-judge court allowed the State to pursue policies best suited to protecting public safety. Those options

are numerous and have been employed in dozens of jurisdictions throughout the country that have reduced their prison populations without any resulting impact on crime rates. Tr. 2103:20-2105:21; 2107:15-2108:17; 2108:19-2109:1, 2110:6-2111:8, 2111:10-21, 2112:17-20 (Dr. Krisberg).

One of the more successful ways to reduce prison population without adversely impacting public safety is to expand the use of so-called “good time” credits, which reduce an inmate’s sentence for sustained compliance with prison rules or by participating in rehabilitative, education or work programs. JS1-App. 196a-204a. In fact, California, like most other states, already rewards inmates for such behavior. Cal. Penal Code §§2931, 2933. The CDCR Undersecretary of Programs, Kathryn Jett, testified that California rewards inmates for good behavior because such a program can reduce recidivism. JS1-App. 196a. *Amici* Joseph Lehman and Jeanne Woodford both have recommended expansion of the good time credit system as a way to reduce overcrowding without adversely impacting public safety. *See* Aug. 15, 2008 Lehman Report ¶ 13; Tr. 1326:21-1327:2, 1361:2-13 (Woodford). In addition to the *amici*, the Governor himself supports expansion of the good time credit system and provided for its expansion in both his 2008 and 2009 budget proposals, stating that good time credits “reduce inmate violence within the CDCR and will facilitate the inmate’s reintegration into society.” Plf. Ex. 780 at 18 (Governor’s Budget, Special Session 2008-09); Jan. 16, 2009 Sturges Decl., Ex. A at 28 (2009-10 Governor’s Budget).

Another option available to the State that would reduce prison overcrowding without impacting public safety is to implement a policy of sending certain low-risk parolees back to prison for technical violations of the terms of their parole only when those violations include the commission of a new crime. As the three-judge court noted, California has a very abnormal practice of sending a high number of technical parole violators to prison. JS1-App. 204a. The State estimates that, each year, more than 70,000 parolees are returned to prison for technical parole violations. *Id.* This occurs notwithstanding that the Governor, key State prison officials, and the State's Expert Panel support the diversion of technical parole violators. Plf. Ex. 238 at 178 (Governor proposal), JS1-App. 207a; Plf. Ex. 2 at 47-49, Appx. A at 77-79, Appx. E at 88-89 (State's expert panel report); JS1-App. 55a; Plf. Ex. 113 at 75-91 (Governor's Strike Team Report), JS1-App. 189a; Plf. Ex. 3 at 31 (California Little Hoover Commission), JS1-App. 53a; Plf. Ex. 4 at 122, 144-155 (Deukmejian Report), JS1-App. 54a; Hoffman Trial Aff. ¶¶ 18-25 (*Plata* Docket 1633) (State parole chief); Def. Ex. 1306; Tr. 1993:6-14 (State's public safety expert).

A third option would be to adopt policies that divert low-risk prisoners with short sentences. As noted by the three-judge court, a number of correctional and law enforcement experts opined that the diversion of low-risk offenders would not have an adverse impact on public safety or the operation of the criminal justice system. JS1-App. 210a. *Amici* share this view. By diverting low-risk criminals into substance abuse programs or correctional day centers, or tracking their behavior with electronic monitoring devices, the State

can protect the public while reducing the number of convicted criminals being sent to already overcrowded prisons. JS1-App. 212a.

The State could also reduce prison populations without endangering public safety by investing in rehabilitation services available to prisoners in prisons and to parolees in the community. The president of the Chief Probation Officers of California, a defendant-intervenor in the case, testified that providing rehabilitative programs to probationers in local communities would by itself reduce the prison population by between 20,000 and 25,000 prisoners. D.E. 1747 at 9. As the three-judge court noted, several jurisdictions throughout California have already implemented such programs, which have reduced recidivism and thereby improved public safety. JS1-App. 215a. In other words, rehabilitative services not only reduce prison overcrowding, but they also improve the community by preventing crime.

In addition to these, the State has many other options – ranging from the construction of new prisons to the transfer of prisoners into other states’ correctional facilities – that would reduce prison overcrowding without negatively impacting public safety. The three-judge court’s order does not require the State to “throw open the doors of its prisons.” JS1-App. 173a-174a. Rather, overwhelming testimony affirms that there are population-reducing measures that “either have no impact” on the recidivism rate “or reduce the recidivism rate” and therefore “would not adversely affect public safety.” JS1-App. 249a; *see also* JS1-App. 196a-220a. By implementing these measures,

CDCR can comply with the three-judge court's order to reduce overcrowding without negatively impacting public safety.

D. Judicial intervention is necessary where Eighth Amendment violations become as intractable as those in the California prison system.

All parties to this litigation agree that the overcrowding taking place in the California prison systems is without precedent. Such overcrowding not only restricts inmate access to healthcare, but also creates a dangerous environment for both CDCR staff and inmates, and impedes efforts to reform prisoners. While the CDCR has spent considerable time and money examining ways to reduce overcrowding, little progress has been made to date. This can largely be attributed to the failure of the California legislature to enact any meaningful legislation to reduce prison overcrowding, despite repeated pleas for help from Governor Schwarzenegger and more than a dozen blue ribbon panels that have studied the crisis. JS1-APpp. 61A; Int. Ap. 55a-56a.

The PLRA was enacted by Congress to address just this situation: where a court order “is truly necessary to prevent an actual violation of a prisoner’s federal rights.” H.R. Rep. No. 104-21, at 25 (1995); *cf.* 141 Cong. Rec. S14419 (daily ed. Sept. 27, 1995) (statement of Sen. Abraham) (noting that the PLRA permits “narrowly tailored order[s] to correct” constitutional violations and that the PLRA “allows the courts to step in where they are needed”). The Governor of California and the CDCR

have attempted to remedy the constitutional violations occurring in State prisons for years, with no success, due to the refusal of the State legislature to enact needed reforms. *See generally*, Plf. Ex. 1. Overcrowding has reached such outrageous levels that the Governor was forced to declare a state of emergency, and still the legislature has not acted. *Id.* Clearly, the three-judge court order is necessary to remedy the ongoing violations of inmates' Eighth Amendment rights.

By affirming the order of the three-judge court, this Court will send a message not only to the California legislature, but to legislatures, governors and prison officials throughout the country, that severe prison overcrowding will not be tolerated when it infringes upon inmates' constitutional rights. This is precisely the message Congress was trying to send when it enacted the PLRA. By upholding the three-judge court's order and reaffirming Congress' intent to protect inmate rights, this court will ensure that prison systems across the country take seriously the threats posed by overcrowding, not only to inmate rights, but to prison employees and the community at large.

CONCLUSION

The order of the three-judge court should be affirmed.

Respectfully submitted,

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