Nos. 09-1233, 09-1232

IN THE
Supreme Court of the United States

GOVERNOR ARNOLD SCHWARZENEGGER, *et al.*,
Appellants,
v.
MARCIANO PLATA AND RALPH COLEMAN, *et al.*,
Appellees.

CALIFORNIA STATE REPUBLICAN LEGISLATOR INTERVENORS, *et al.*,
Appellants,
v.
MARCIANO PLATA AND RALPH COLEMAN, *et al.*,
Appellees.

On Appeal from Orders of the Three-Judge Court in the United States District Courts for the Eastern District of California and the Northern District of California

APPELLEE INTERVENOR CALIFORNIA CORRECTIONAL PEACE OFFICERS' ASSOCIATION'S MOTION TO DISMISS OR AFFIRM

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APPELLEE INTERVENOR CALIFORNIA CORRECTIONAL PEACE OFFICERS' ASSOCIATION'S MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 18.6, Appellee Intervenor California Correctional Peace Officers' Association ("CCPOA") moves to dismiss the Jurisdictional Statements filed by Appellants and Appellant-Intervenors or, in the alternative, to affirm the judgment sought to be reviewed, on the ground that the questions on which they depend are so insubstantial as not to warrant further review.

JURISDICTION

This Court does not have jurisdiction to review the convening of the three-judge district court pursuant to the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626(a)(3)(B), because that order is appealable only to the Ninth Circuit Court of Appeals. *See Dove v. Bumpers*, 497 F.2d 895, 896 (8th Cir. 1974) (court of appeals has jurisdiction to determine whether three-judge court properly convened); *Mayhue's Super Liquor Store, Inc. v. Meiklejohn*, 426 F.2d 142, 144-45 (5th Cir. 1970) (same).

This Court has jurisdiction under 28 U.S.C. § 1253 to review the three-judge district court's "Order to Reduce Prison Population" (State App. II:1a-10a) and its "Opinion and Order" making the requisite predicate findings (State App. I:1a-256a) (collectively, the "Orders").[1]

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[1] "State App. I" refers to the appendix Appellants filed in Case Number 09-416. "State App. II" refers to the appendix they filed in this case.

STATEMENT OF THE CASE

Appellee Intervenor CCPOA represents the men and women who work in California state prisons: approximately 35,000 correctional officers, counselors, parole agents, medical technical assistants, and correctional sergeants and lieutenants. As peace officers, CCPOA members share the concern for public safety that compelled Congress to pass the PLRA. CCPOA intervened in this case because the extreme overcrowding in California prisons has not only caused Eighth Amendment violations, but has also endangered prison staff, making it difficult for staff to fulfill their duties.

Correctional staff are the only Intervenors who daily confront these sobering realities. In granting CCPOA's motion to intervene, the district court found: "It is plain that California's prison guards are affected by the conditions of the prisons in which they work," and that CCPOA was "uniquely situated" to provide evidence regarding prison conditions. *Coleman* Docket No. 2427.

Appellants and their Intervenors overstate the conflict between the State and the district court. Although Appellants *argued* in the three-judge proceeding that the constitutional violations had been remedied, the State has conceded as recently as September 2009 that the constitutional violations continue. *See Plata* Appellees' Motion to Dismiss or Affirm, at pp. 14-15. The State has also not sought to lift the special master appointment or the receivership, respectively, on the basis that the State had remedied the constitutional violations. State App. I:77a. In fact, the State never even appealed the finding of constitutional violations in *Coleman*

and stipulated to liability in *Plata*. *See* State App. I:15-16a, 31-32a.

CCPOA supported Appellees' efforts to convene the three-judge court because the single-judge district courts had exhausted all other means to bring the California prison system into compliance with the Eighth Amendment. As described below, correctional officers did their best to fulfill their duties under these extremely difficult, unconstitutional conditions.

The three-judge court found that correctional staff were "essential to providing healthcare to prisoners." State App. I:110a, quotation and citation omitted. Among other roles, correctional officers escort prisoners to medical services within an institution, and they supervise and protect prisoners transported elsewhere for treatment. *See ibid.* Perhaps more importantly, correctional staff are primarily responsible for alerting medical staff when prisoners complain of acute medical issues, and are charged with observing prisoners to identify medical or mental health issues. *See ibid.*

But as correctional officers testified at trial, the over-crowding in California prisons makes it difficult for them to perform these vital functions, which in turn directly affects inmate medical and mental health care:

- Officer Brenda Gibbons testified that she was required to place suicidal prisoners in converted supply closets due to the shortage of available suicide watch beds, where she observed them for hours at a time. Trial Tr. 558-560, 575-576. Even though the prison regulations set time limits for holding suicidal prisoners in such settings, officers had been

ordered to cycle suicidal prisoners from these cells to another room and back again because of the shortages, resulting in overnight stays. *Id.* at 575.

- Due to the lack of adequate treatment space, half of the mental health treatment services that Officer Gibbons observed occurred in the prison yard, which meant that programs were frequently cancelled due to inclement weather or during emergencies elsewhere in the prison. *Id.* at 566, 577.

- Inmates wait hours for medical care in chaotic and unsafe conditions. Officer Gary Benson testified that up to fifty inmates routinely wait in a "holding caged area" for two to five hours, to see a doctor in a 20-foot by 35-foot "clinic." Doctors examine four to six inmates in the same tiny room, surrounded by unlocked boxes of needles, scissors and narcotics. Officer Benson is the only officer present. Trial Tr. 592-599.

- Debbra Rowlett is a correctional officer and a licensed nurse. Trial Tr. 657, 659-660. She testified that she witnessed inmates standing in lines 300 people deep to obtain their prescribed psychotropic medications. Officer Rowlett testified that inmates sometimes receive the wrong medication. Correctional staff and nurses have no time to double-check prescriptions, ask about adverse effects, or ensure that inmates consume their medication—all essential for proper medical care. Unsupervised prisoners may have their medication stolen by other inmates, or hoard it, rather than consuming it. Officer Rowlett testified

that at least one prisoner died after purposely overdosing on hoarded medication. *Id.* at 665-667.

- Correctional Sergeant Kevin Raymond works on a team responsible for prison construction and operations planning. Trial Tr. 535-536. He testified that the majority of California prisons were designed with sufficient medical space to treat a population based on only one inmate per cell, yet CDCR planned to house two inmates per cell. *Id.* at 542-543. Thus almost all California prisons have less than half the space necessary to provide adequate medical care at current population levels. But even if there were sufficient space, correctional officers testified that there are insufficient correctional officers to transport inmates to appointments or to monitor them. Trial Tr. 679, 692; *see also* State App. I:110a.

These officers' testimony made plain how overcrowding strained every resource beyond the breaking point, and the impact that had on correctional staff and inmates.

Their testimony also demonstrated that sufficient correctional-staff-to-inmate ratios are essential for delivery of constitutionally-adequate medical and mental health services to California prisoners. The three-judge district court, however, found that "[t]he California prison system lacks sufficient custodial staff . . . to provide prisoners with timely access to [medical] care and still perform other essential [penological] functions." State App. I:110a, quotation and citations omitted. The evidence established that understaffing undermines health care services, placing prisoners at substantially increased risk of fur-

ther deterioration. State App. I:111-112a. Despite their best efforts, overworked correctional staff are less-well placed to respond to medical emergencies because of "forced overtime and burnout" (State App. I:111a, internal quotations and citations omitted) and because it is unsafe to leave hundreds of prisoners supervised by only one officer so that his or her partner can take a sick inmate to receive medical care. *Id.* at 110-111a.

Based on this and other evidence presented during a multi-week trial the three-judge district court concluded that overcrowding was the primary cause of the constitutional violations in California prisons. State App. I:140-143a. After determining that no other relief would remedy the constitutional violations (*id.* at 168a), that it was the least intrusive remedy (*id.* at 168-175a), and that public safety would not be adversely affected (*id.* at 220-234a), the three-judge court ordered the State to propose a plan to reduce the prisoner population to 137.5% of design capacity within two years. *Id.* at 255-256a. It did not order any specific mode of relief—much less any prisoner release—but instead allowed the State to design its own plan in the first instance. *Id.* The court outlined numerous options available to the State to comply with its order (*id.* at 192-220a), many of which the Governor himself recently proposed to the Legislature for independent budgetary reasons, including a prisoner reduction of 37,000 over two years. *See Plata* Docket No. 2269.

The State's first submitted plan did not comply with the most basic parameters of the court's order. *Plata* Docket No. 2269; *see also* State App. II:3a. Accordingly, the court rejected the State's plan on October 21, 2009, and gave the State even more

time to submit a plan that did comply. *Ibid.* On November 12, the State filed its second proposed population plan, which complied with the three-judge court's orders. *See* State App. II:3a.

The three-judge court approved the State's revised plan on January 12, 2010 and ordered the State to implement the six-month population reduction benchmarks. *Ibid.* The court did not "endors[e] or order[] the implementation of any of the specific measures" in the revised plan. Rather it gave the State "maximum flexibility" to determine which "specific population reduction measures" it would use. State App. II:3-4a. The three-judge court thus ordered the State to reduce the prison population—through the means it deemed best—to 167% of design capacity in six months, 155% in 12 months, 147% in 18 months, and 137.5% in twenty-four months. State App. II:6-8a. The three-judge court stayed its order until resolution of any appeal to this Court, noting that the stay gave California "additional time" to voluntarily comply with its orders through the political process. *Id.* at 8-9a.

Three days later, on January 15, 2010, this Court dismissed the State's premature appeal from the August 4, 2009 order. *Schwarzenegger v. Plata*, 130 S. Ct. 1140 (2010). The State filed this second appeal on January 19, 2010.

THE CHALLENGED ORDERS ALLOW CALIFORNIA TO CRAFT A POPULATION CAP IN ACCORD WITH ITS PRIORITIES

CCPOA supports affirming the three-judge district court's actions below or, in the alternative, dismissing Appellants' and Intervenors' Jurisdictional Statements.

Despite its inapt name and Appellants' repeated implication, a "prisoner release order"[2] under the PLRA does not require California to fling open its prison gates. CCPOA cedes ground to no one in its concern for public safety and would not support so indiscriminate an order. Rather, a "prisoner release order" is "any order . . . that has the purpose or effect of reducing or limiting the prison population . . . ." *See* 18 U.S.C. § 3626(g)(4).

Appellants make no case that lawlessness is imminent. The overwhelming testimony at trial supported the three-judge court's conclusion that a prisoner population reduction "would not adversely affect public safety" if the State implemented appropriate measures. State App. I:249a; State App. II:4a. Nothing prevents the State from implementing systemic reforms to safely reach constitutional conditions. The State is not limited to its history of inaction or contradictory actions, such as issuing a plan dependent upon rehabilitation services while slashing the CDCR budget for rehabilitative programs. *See Plata* Docket 2269.

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[2] The version of the PLRA in effect before the 1996 amendments more accurately described such an order as an "inmate population ceiling." *See* Pub. L. No. 103-322, § 20409, 108 Stat. 1827 (1994) (formerly codified at 18 U.S.C. § 3626(b) (1995)).

Moreover, the Governor himself proposed reducing the prison population by 37,000 in two years for budgetary reasons, and the State conceded that the Governor would not make proposals that are not safe. *See Plata* Docket 2258; *see also* Trial Tr. 2984:7-2985:15. Understood in this context, Appellants essentially take the position that they cannot safely reduce the prison population when required to do so by the Constitution, but that they can do so for budgetary reasons. As explained above, the truth is that the State executive and legislative branches have before them a broad range of methods by which to implement a population cap that "ensur[es] the public safety." State App. II: 4a.

Appellants insist that the three-judge court only examined "the state of staffing in 2007" when it determined that increased staffing alone would not cure the constitutional deficiencies. State J.S. 22-23. Appellants also claim that CDCR hired such a large number of "custodial staffers . . . dedicated [to] 'access to care' units" in 2007 and 2008 that "[prisons] are actually overfilled." State J.S. 16. The first contention is incorrect, and the second is misleading because it ignores understaffing in other parts of each prison.

The court considered officer testimony during the late 2008 trial that in prison dormitories, one or two correctional officers supervise approximately 200 inmates. State App. I:111a. It found that when a prisoner medical emergency arises under these conditions custodial staff "can only sound the alarm, make frantic telephone or radio calls, and hope for backup." *Ibid.* For example, Officer Rowlett testified that if officers respond to a serious medical emergency (as she and her partner had to with an

inmate who suffered three seizures a day), no correctional officer is available to supervise the other almost two hundred inmates, creating a safety hazard for inmates and staff. Trial Tr. 678-680. CCPOA also produced other evidence at trial showing that many units in state prisons were currently understaffed. *See, e.g.*, Trial Tr. 571 (testimony from late 2008 by Officer Gibbons that staff were required to work 16-hour shifts due to understaffing); *id.* at 660 (Officer Rowlett testifying that overcrowding impacts "amount of care" staff is able to give inmates at current staffing levels); *id.* at 678 (at current staffing levels, correctional officers unable to monitor inmate medical conditions in dormitories holding 250-300 prisoners).

The three-judge court also relied on evidence from the *Plata* Receiver that in 2008 custodial understaffing and the State's lack of an "organizational structure and processes" for escorting prisoners to medical appointments resulted in "denial of timely access to health care services and substantially increases the risk that [prisoners'] health will further deteriorate." State App. I:111-112a, citations and quotations omitted. As late as September 2008, Appellees' expert Dr. Shansky opined that inadequate correctional staffing "caused significant delays in treatment." State App. I:112a, citation and quotation omitted.

Thus, the court explicitly considered whether additional staffing alone would resolve the constitutional deficiencies and found that it would not. The court concluded, after considering the extensive evidence before it, that "[a] reduction in the crowding of California's prisons would help ease the burden on the custodial staff and permit staff members to better monitor inmates for medical or mental health prob-

lems and to deliver inmates for necessary care." State App. I:112a. Overcrowding strains correctional staffs' ability to provide services to prisoners, including access to medical and mental healthcare. The facts before the three-judge court demonstrated that prisons are far from being adequately staffed to facilitate delivery of constitutionally-adequate medical and mental healthcare.

CONCLUSION

For all these reasons, this Court should dismiss the appeals and/or affirm the three-judge district court's orders.

Respectfully submitted,

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