

No. 09-

IN THE
Supreme Court of the United States

GOVERNOR ARNOLD SCHWARZENEGGER, *et al.*,

Appellants,

v.

MARCIANO PLATA AND RALPH COLEMAN, *et al.*,

Appellees.

**APPELLANTS' APPLICATION FOR A STAY PENDING THIS COURT'S
FINAL DISPOSITION OF APPEAL PURSUANT TO 28 U.S.C. § 1253**

**TO THE HONORABLE ANTHONY M. KENNEDY,
ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT
AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT**

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September 4, 2009

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Appellees are the following:

Gilbert Aviles	Clifford Myelle
Steven Bautista	Marciano Plata
Ralph Coleman	Leslie Rhoades
Paul Decasas	Otis Shaw
Raymond Johns	Ray Stoderd
Joseph Long	

California Correctional Peace Officers' Association, intervenor-plaintiff

Appellants are the following five defendants:

Governor Arnold Schwarzenegger
Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation
John Chiang, California State Controller
Michael Genest, Director of the California Department of Finance
Stephen W. Mayberg, Director of the Department of Mental Health

The following 146 individuals are intervenor-defendants:

Samuel Aanestad, Legislator	City of Alhambra Police Chief
Anthony Adams, Legislator	Jim Hudson
Amador County Sheriff Martin Ryan	City of Atwater Police Chief
Joel Anderson, Legislator	Richard Hawthorne
Roy Ashburn, Legislator	City of Delano Chief of
Chief Probation Officer Kim Barrett	Corrections George Galaza
James F. Battin, Jr.*, Legislator	City of Delano Police Chief
John Benoit, Legislator	Mark DeRosia
Tom Berryhill, Legislator	City of Fremont Police Chief
Sam Blakeslee, Legislator	Craig Steckler
Police Chief Michael Billdt	City of Fresno Police Chief
Butte County Chief Probation Officer John Wardell	Jerry Dyer
Butte County Sheriff-Coroner Perry L. Reniff	City of Grover Beach Police Chief
Calaveras County Sheriff Dennis Downum	Chief Jim Copsey
District Attorney Ronald L. Calhoun	City of Modesto Police Chief
Chief Probation Officer Lionel Chatman	Roy Wasden
	City of Pasadena Police Chief
	Barney Melekian
	City of Paso Robles Police Chief
	Lisa Solomon
	City of Roseville Police Chief
	Joel Neves

City of San Bernardino Police
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City of Santa Clara Police Chief
Steve Lodge
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City of Vacaville Police Chief
Rich Word
City of Whittier Police Chief
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Contra Costa County Chief
Probation Officer Lionel
Chatman
Contra Costa County Sheriff
Warren Rupf
County of San Mateo
County of Santa Barbara
County of Santa Clara
County of Solano
County of Sonoma
Paul Cook, Legislator
Dave Cox, Legislator
Police Chief Mark DeRosia
Chuck DeVore, Legislator
Del Norte County Sheriff Dean
Wilson
Sutter County Sheriff Jim
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District Attorney Bonnie M.
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Robert Dutton, Legislator
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El Dorado County Sheriff Jeff
Neves
Bill Emmerson, Legislator
District Attorney Bradford
Fenocchio
Fresno County Chief Probation
Officer Linda Penner

Fresno County Sheriff Margaret
Mims
Jean Fuller, Legislator
Glenn County Sheriff Larry
Jones
National City Police Chief
Adolfo Gonzales
Ted Gaines, Legislator
Martin Garrick, Legislator
Police Chief Richard Hawthorne
Sheriff Pat Hedges
Dennis Hollingsworth,
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Shirley Horton*, Legislator
Guy S. Houston*, Legislator
Police Chief Jim Hudson
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Humboldt County Sheriff Gary
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Inyo County Chief Probation
Officer Jim Moffet
Inyo County Sheriff William
Lutze
District Attorney Edward R.
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Kevin Jeffries, Legislator
Sheriff Larry Jones
Sheriff Mike Kanalakis
Rick Keene*, Legislator
Kern County Sheriff Donny
Youngblood
District Attorney Robert Kochly
Doug La Malfa*, Legislator
Bill Maze*, Legislator
Lake County Sheriff Rod
Mitchell
Lassen County Sheriff Steve
Warren
Los Angeles County Sheriff Lee
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Sheriff William Lutz
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Mariposa County Chief
Probation Officer Gail Neal

Sheriff Jim Mele
Police Chief Barney Melekian
Mendocino County Sheriff Tom
Allman
Merced County Sheriff Mark
Pazin
Chief Probation Officer Don
Meyer
Chief Probation Officer Jim
Moffett
Mono County Sheriff Richard
Scholl
Monterey County Sheriff Mike
Kanalakis
San Joaquin County Sheriff
Steve Moore
District Attorney Clifford
Newell
Roger Niello, Legislator
Orange County Sheriff Coroner
Michael S. Carona
District Attorney Rod Pacheco
District Attorney David W.
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District Attorney Vern Pierson
Placer County Sheriff Edward
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George Runner, Legislator
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Curtis Hill
San Diego County Sheriff
William B. Kolender

San Mateo County Sheriff Greg
Munks
Santa Barbara County Chief
Probation Officer Patricia
Stewart
Santa Barbara County Sheriff
Bill Brown
Santa Clara County Sheriff
Laurie Smith
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Tehema County Sheriff Clay
Parker
Ventura County Sheriff Bob
Brooks
Michael N. Villines, Legislator
Mimi Walters, Legislator

Police Chief Rich Word
Mark Wyland, Legislator
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APPLICATION FOR A STAY PENDING FINAL DISPOSITION OF APPEAL

Pursuant to Rules 22 and 23 of this Court's Rules, appellants, Governor Arnold Schwarzenegger, John Chiang, Michael C. Genest, Matthew Cate, and Stephen W. Mayberg (collectively, California or the State) respectfully submit this application for a stay of the judgment and injunctive relief ordered below by a three-judge district court sitting in the Eastern District and the Northern District of California pending final disposition of an appeal to this Court under 28 U.S.C. § 1253. The State filed its Notice of Appeal of the order; its motion to stay the order already has been denied by the three-judge court; and the State is prepared to file its Jurisdictional Statement within 30 days or as soon as the Court requires in order to expedite resolution of this case. Every day that the three-judge court's order hangs over California, it places enormous strains on the State's existing resources and creates intolerable anxiety for both officials and residents of the nation's most populous State.

Convened pursuant to the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626(a)(3)(B), the three-judge district court (Reinhardt, Henderson, Karlton, J.J.) ordered injunctive relief against appellants in the form of a "prisoner release order," *id.* § 3626(a)(3), which will require that California reduce its prison population by approximately 46,000 inmates—25 percent of its total prison population—within two years. See *Coleman v. Schwarzenegger*, No. CIV S-90-0520 LKK JFM P, *Plata v. Schwarzenegger*, No. C01-1351 TEH, 2009 WL 2430820, at *116, *106 (E.D. Cal./N.D. Cal. Aug. 4, 2009) (hereafter "*Coleman/Plata*") (attached as Ex. A, hereto). The single-judge district courts have imposed a series of remedies to address

California's alleged failure to provide medical care to inmates with serious medical needs and failure to provide mental health care to inmates with serious mental disorders, respectively. The three-judge court, however, concluded for the first time that general overcrowding in California prisons was the "primary cause" of the underlying Eighth Amendment violations. See, e.g., *id.* at *61-63; see also *id.* at *54 n.55 (recognizing that "the primary cause issue is ultimately a question of law for the three-judge court to decide"); see generally 18 U.S.C. § 3626(a)(3)(E)(i) (crowding must be the "primary cause" of the underlying violation of federal rights before prisoner release may be ordered). The court held that no relief short of reducing significantly the entire prison population would suffice. See 18 U.S.C. § 3626(a)(3)(E)(ii). Accordingly, the court's order imposes a population cap of 137.5% of design capacity on California's prisons and requires that the State submit a prison reduction plan to the three-judge district court by September 18, 2009, that outlines how it will meet these requirements and what reductions will be achieved after six, twelve, eighteen, and twenty-four months. *Coleman/Plata, supra*, at *116.

Under the "well established" principles governing stay applications to a circuit justice, a stay is warranted here. *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers); *Lucas v. Townsend*, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers). To obtain a stay, the applicant must show (1) "a 'reasonable probability' that four Justices will consider the issue sufficiently meritorious to . . . note probable jurisdiction"; (2) "a fair prospect that a majority of the Court will conclude that the decision below was erroneous"; and (3) a likelihood

that “irreparable harm [will] result from the denial of a stay.” *Id.* at 1308; *accord Ind. State Police Pension Trust v. Chrysler LLC*, 129 S. Ct. 2275, 2276 (2009) (per curiam). Additionally, a fourth factor may apply: “in a close case it may be appropriate to ‘balance the equities’—to explore the relative harms to applicant and respondent, as well as the interests of the public at large.” *Rostker*, 448 U.S. at 1308. As detailed below, all four considerations are readily satisfied here. See *infra* at 13-33.¹

First, not only is there is a reasonable probability that at least four Justices will find there is probable jurisdiction, it is highly likely that the Court will do so. This case presents federal questions whose “substantiality . . . cannot be doubted.” *Lucas*, 486 U.S. at 1304. The order of the court below is the first “prisoner release order” entered over a state’s objection since the 1996 enactment of the PLRA. It marks the first time a federal district court has interpreted the PLRA’s “primary cause” requirement; the order’s scope sweepingly exceeds any prisoner release relief in history; and the order will likely place communities across the nation’s largest state in danger if it takes force. The immediate impact of the order is to divert State legislative and executive attention from State-initiated prison reform at a time when it is needed the most.

Second, there is a fair prospect that a majority of the Court will conclude that the order imposing a prison population cap and requiring California to reduce its

¹ Before filing this application, appellants filed a motion for a stay with the three-judge district court on September 1, 2009. See Defs.’ Mot. Stay, *Plata*, No. C01-1351 TEH (N.D. Cal. filed Sept. 1, 2009) (Docket No. 2216). On September 3, 2009, the three-judge court denied the motion for stay. See *Coleman v. Schwarzenegger*, *Plata v. Schwarzenegger*, Nos. CIV S-90-0520 LKK JFM P, C01-1351 THE (E.D. Cal./N.D. Cal. Sept. 3, 2009) (*Plata* Docket No. 2218) (attached as Ex. C, hereto).

prison population by an amount the court below estimated to be approximately 46,000 inmates cannot be sustained.² The three-judge district court misconstrued the PLRA's requirement that "crowding is the primary cause of the violation of a Federal right," when—by the district court's own admission—myriad causes are at issue, remedying crowding will not itself remedy the underlying alleged constitutional violations, and the individual district courts had issued a series of extreme remedies aimed at these alleged constitutional violations, but they have not been shown to be inadequate to cure the problems. Indeed, even if crowding had been the "primary cause" of the violations, the general population cap of 137.5% of California's prisons' "design capacity" is erroneous because, by the district court's own findings, no nexus exists between the proposed population reduction and the delivery of constitutionally adequate care to the *Plata* and *Coleman* classes. Additionally, although it acknowledged "that resources at the community level are strained, particularly because of the current fiscal crisis," *Coleman/Plata*, 2009 WL 2430820, at *99, the court erred by failing sufficiently to account for the dangers to the public and strains on the State's finances and machinery of government that will be created by a reduction of 46,000 over a two-year period.

Third, denial of a stay will result in substantial irreparable harm to the State and its citizens. By September 18, 2009, the State must submit a plan to reduce its prison population by 46,000 inmates over a two-year period. Although the State will endeavor to comply with the district court's deadline in the event that no stay is

² Based on the evidence at the time of trial, the three-judge court estimates the prisoner reduction to be approximately 46,000 inmates. Because the actual prison population fluctuates over time, the estimated reduction does as well, but for simplicity we will use the 46,000 figure.

issued, developing such a plan requires substantial attention from California's executive and its agencies, as well as its legislature, at a time when the State's resources are limited and its personnel already are spread exceedingly thin. California is in the midst of an historic budget crisis, including massive budget cuts, layoffs, and forced furloughs of its employees. This diversion of resources from the numerous other pressing matters facing California will be an irreparable injury to the State and its citizens. Moreover, the relief ultimately required—a prisoner release order of 46,000 inmates—likely will create dangers to communities throughout California at a time when they are most vulnerable and the State is least equipped to provide services for released prisoners that might prevent future criminal activity.

Fourth, even if a close case were presented here—and this is no close case—the balance of equities strongly favors California. Absent a stay, the harms to California and the general public will be irreparable and significant. By contrast, the three-judge court repeatedly admitted that even the prisoner release order will not cure the constitutional deprivations about which appellees complain. In any event, the population reductions will be phased-in over two years, thus any delay pending appeal would be relatively insignificant and in the meantime, the single-judge district court proceedings remain pending and relief remains available to remedy alleged constitutional problems on a more individualized basis.

For these reasons and as detailed below, appellants request that the Court grant the application to stay the judgment and injunctive relief ordered below pending final resolution of this appeal.

STATEMENT

The appeal involves two cases, *Plata* and *Coleman*, which, before being referred to the three-judge court, were in their remedial phases before the Northern and Eastern Districts of California, respectively. The remedial phases followed settlements between the parties in *Plata* and the court's findings in *Coleman* regarding underlying constitutional and federal statutory violations relating to California's provision of medical care and mental health care services in its prisons. The cases then were consolidated before the three-judge court to determine whether a prisoner release order should issue under the PLRA to remedy crowding that plaintiffs newly contended was the "primary cause" of the underlying violations of their federal rights. See 18 U.S.C. § 3626(a)(3).

A. *Plata*

Plata, which was filed in April 2001, is a class action lawsuit concerning the constitutional adequacy under the Eighth Amendment and sufficiency under the Americans with Disabilities Act and the Rehabilitation Act of medical care provided to California's adult inmates with "serious medical conditions." Pls.' Am. Compl., *Plata*, No. C01-1351 TEH, at 52:22-53:4, 55:16-23 (N.D. Cal. filed Aug. 20, 2001) (Docket No. 20); see also *Coleman/Plata*, 2009 WL 2430820, at *4 (discussing plaintiffs' complaints about, *inter alia*, "inadequate medical screening,"

