RECENT CASES

CONSTITUTIONAL LAW — EIGHTH AMENDMENT — EASTERN DISTRICT OF CALIFORNIA HOLDS THAT PRISONER RELEASE IS NECESSARY TO REMEDY UNCONSTITUTIONAL CALIFORNIA PRISON CONDITIONS. — *Coleman v. Schwarzenegger*, No. CIV S-90-0520 LKK JFM P, 2009 WL 2430820 (E.D. Cal. Aug. 4, 2009).

In an attempt "to restrict the equity jurisdiction of federal courts,"[1] Congress passed the Prison Litigation Reform Act of 1995[2] (PLRA). The legislation created "a comprehensive set of standards to govern prospective relief in prison conditions cases."[3] These standards were designed, in part, to make sure that prisoner release orders would be a "remedy of last resort."[4] Recently, in *Coleman v. Schwarzenegger*,[5] a three-judge court sitting for the Eastern District of California held that a reduction in the California prison population was necessary to provide constitutional levels of medical and mental health care. Even though the court's decision ordered a significant reduction in the prison population, the decision illustrates that the standards imposed by the PLRA overly restrict the ability of courts to generate a comprehensive remedial solution to prison crowding.

The court's order is part of a two-decade-long battle over medical and mental health care conditions in California prisons. *Plata v. Schwarzenegger*[6] was filed in the U.S. District Court for the Northern District of California in 2001 and alleged "constitutional violations in the delivery of medical care" in California prisons.[7] In 2002, the state agreed to implement policies designed to bring medical care up to constitutional levels.[8] However, as of 2005, implementation had not been completed in a single prison,[9] and the district court judge appointed a receiver to oversee prison medical care.[10] *Coleman* was filed in 1990 in the U.S. District Court for the Eastern District of California and alleged "inadequacies in the delivery of mental health care to inmates."[11]

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1 Gilmore v. California, 220 F.3d 987, 999 (9th Cir. 2000).

2 Pub. L. No. 103-134, tit. VIII, 110 Stat. 1321-66 (2006) (codified in scattered sections of 11, 18, 28, and 42 U.S.C.).

3 *Gilmore*, 220 F.3d at 998.

4 H.R. REP. NO. 104-21, at 25 (1995).

5 No. CIV S-90-0520 LKK JFM P, 2009 WL 2430820 (E.D. Cal. Aug. 4, 2009). The *Coleman* case was combined with *Plata v. Schwarzenegger*, No. C01-1351 TEH, 2005 WL 2932253 (N.D. Cal. Oct. 3, 2005).

6 2005 WL 2932253.

7 *Coleman*, 2009 WL 2430820, at *3.

8 *See Plata*, 2005 WL 2932253, at *1.

9 *Id.* at *19.

10 *Id.* at *33.

11 *Coleman*, 2009 WL 2430820, at *12.

The district court judge appointed a special master in 1995 to help implement a remedial plan.[12] Unfortunately, remedial efforts have failed in both cases due to overcrowding.[13] While neither plaintiff initially alleged that overcrowding caused the constitutional violations,[14] the problems presented by prison overcrowding have increased as the prison population in California has expanded 750% since the mid-1970s.[15] Given the lack of improvement in medical and mental health care conditions in California prisons, the plaintiffs from *Plata* and *Coleman* combined to request a prison population reduction.[16]

The PLRA "restricts the ability of Federal judges to affect the capacity and conditions of prisons and jails beyond what is required by the Constitution and Federal law."[17] Responding to the concern that judge-ordered prison population caps were creating "revolving door justice,"[18] the statute requires federal judges to find that prison conditions violate constitutional or federal standards before ordering improvements to prison conditions.[19] After a violation has been found, the district court judge is limited to ordering the "least intrusive [remedy] necessary to correct the violation of the Federal right."[20] While the district court judge manages the bulk of the remedial process, before a prisoner release order may be granted, the judge must request that a three-judge court consider the issue.[21] The PLRA authorizes the three-judge court to enter a prisoner release order only after finding that crowding is the primary cause of the violation and that a release is necessary to remedy the violation.[22]

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[12] *Id.* at *14. Since then, the special master has filed over seventy reports and "the *Coleman* court has issued well over seventy orders." *Id.* at *15.

[13] *See* Plata v. Schwarzenegger, No. C01-1351 TEH, 2007 WL 2122657, at *4 (N.D. Cal. July 23, 2007) ("Every element of the [receiver's] Plan of Action faces crowding related obstacles."); Coleman v. Schwarzenegger, No. CIV S-90-0520 LKK JFM P, 2007 WL 2122636, at *4 (E.D. Cal. July 23, 2007) ("[The] deficiencies are unquestionably exacerbated by overcrowding.").

[14] For example, the *Plata* plaintiffs alleged that the constitutional violations in prison medical care were due to a variety of causes, including inadequate screening and untimely responses to emergencies. *Coleman*, 2009 WL 2430820, at *4. In 1994, the judge in the *Coleman* trial found that the constitutional violations were a result of "failure to identify with any accuracy the number of mentally ill inmates in the prison population." *Id.* at *12.

[15] *Id.* at *19. "Much of this population expansion occurred during the time in which the *Plata* and *Coleman* courts have monitored the . . . health care in California's prisons." *Id.*

[16] *Id.* at *2. The defendant did not challenge the court's determination that inmates failed to receive constitutionally adequate levels of mental and physical health care. *Case Law Developments*, 33 MENTAL & PHYSICAL DISABILITY L. REP. 196, 269 (2009).

[17] H.R. REP. NO. 104-21, at 7 (1995).

[18] *Id.* at 9 (internal quotation marks omitted). Senate debate included assertions that a prison cap was a cause of increased violent crime in Philadelphia because it forced the early release of violent offenders. *See* 142 CONG. REC. 8237 (1996).

[19] *See* 18 U.S.C. § 3626(a)(1) (2006).

[20] *Id.* § 3626(a)(1)(A).

[21] *Id.* § 3626(a)(3); *see* 28 U.S.C. 2284 (2006).

[22] 18 U.S.C. § 3626(a)(3)(E).

The three-judge court[23] held that the courts' prior remedial efforts had been ineffective and that the only way to provide constitutional levels of medical and mental health care would be to reduce the prison population.[24] The court began by analyzing the legal framework of the PLRA. In the PLRA, claims for prospective relief require a showing that the relief is "narrowly drawn" and "extend[s] no further than necessary to correct the violation of the Federal right."[25] In evaluating the claim, the court must give "substantial weight" to the prospective relief's effect on public safety and the operation of the criminal justice system.[26] Additional requirements applied in this case because the plaintiffs requested a prisoner release order.[27] For prisoner release orders, the PLRA requires further findings that: (1) less intrusive forms of relief had already been ordered and the defendant had "a reasonable amount of time to comply with the previous court orders";[28] (2) a three-judge court had been established to consider the propriety of the prisoner release order;[29] and (3) "crowding is the primary cause of the violation of the Federal right" and "no other relief [but a prisoner release order] will remedy the violation of the Federal right."[30]

The court first evaluated these three requirements for prisoner release orders and easily found that the first two requirements were satisfied.[31] In evaluating the third requirement — that crowding be the primary cause of the violation — the court found that, with the prison system at 190% of design capacity, there was "no dispute about the egregious nature of the overcrowding in this case."[32] Based on expert testimony regarding the negative effects of overcrowding,[33] the court

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[23] The three-judge court included Judges Reinhardt (Ninth Circuit), Karlton (U.S. District Court for the Eastern District of California), and Henderson (U.S. District Court for the Northern District of California). The decision was unanimous and the authorship anonymous. The three-judge court was created pursuant to 28 U.S.C. § 2284, which gives the circuit court's chief judge the power to appoint one court of appeals and one district court judge to sit with the district judge who requested the court. The court was requested by Judge Karlton, who oversaw the *Coleman* case. Judge Henderson was the district court judge in charge of the *Plata* case.

[24] *Coleman*, 2009 WL 2430820, at *115.

[25] 18 U.S.C. § 3626(a)(1)(A).

[26] *Id.*

[27] *Coleman*, 2009 WL 2430820, at *28.

[28] 18 U.S.C. § 3626(a)(3)(A).

[29] *Id.* § 3626(a)(3)(B).

[30] *Id.* § 3626(a)(3)(E).

[31] *Coleman*, 2009 WL 2430820, at *29.

[32] *Id.* at *31. The court also found that due to constitutionally inadequate medical care, a prisoner "was dying needlessly every six to seven days." *Id.* at *1.

[33] *See id.* at *33. Considering the testimony of seven expert witnesses, the court found that overcrowding led to a variety of impediments to the adequate provision of health care, including poor reception and treatment areas, an inability to house inmates by mental health classification, a lack of beds for mentally ill patients, an inability to recruit medical and mental health staff, poor medical records management, and poor suicide prevention care. *See id.* at *33–54.

concluded that "reducing crowding is a necessary but not sufficient condition for eliminating the constitutional deficiencies in the provision of medical care."[34] Ultimately, the court found "clear and convincing evidence establish[ing] that crowding is the primary cause of the constitutional violations."[35]

The court next evaluated whether there were any forms of relief other than a prisoner release order that would remedy the constitutional violations. The court found that the PLRA did not require prisoner release to be sufficient to remedy the constitutional violations on its own, but rather required it to be "a necessary part of any successful remedy."[36] The court rejected the construction of additional prisons[37] and continued use of the receiver and special master[38] as alternative options before reaching its finding that there were no other sufficient forms of relief available.[39]

Having found that the specific requirements for a prisoner release order under the PLRA were met, the court next turned to the general requirements for prospective relief: "[T]he relief must be 'narrowly drawn, extend[] no further than necessary to correct the violation of the Federal right, and [be] the least intrusive means necessary to correct the violation of the Federal right.'"[40] Under these criteria, the court found that a system-wide remedy was appropriate because the constitutional violations were prevalent throughout the California prison system.[41] In order to comport with the Supreme Court's approach in *Bounds v. Smith*[42] and to give the state sufficient discretion, the court held that the state should be allowed to propose how to implement a court order requiring a reduction in the prison population.[43]

The court proceeded to evaluate the level of population reduction necessary to create a narrowly tailored remedy.[44] The plaintiffs sought a cap of 130% of design capacity, the same level that was recommend-

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[34] *Id.* at *58.

[35] *Id.* at *63.

[36] *Id.*

[37] *Id.* at *64. The court found that permitting plans for new prisons to satisfy constitutional requirements would render the PLRA's regulation of prison release orders unnecessary since, in theory, more prisons could always be built. *Id.* The court pointed to the lack of plans and funding to build additional prisons or other facilities in the near future as evidence that such construction was not an available remedy. *Id.* at *64–68.

[38] *Id.* at *69–71.

[39] *Id.* at *75.

[40] *Id.* (alterations in original) (quoting 18 U.S.C. § 3626(a)(1)(A) (2006)).

[41] *Id.* at *76. The court acknowledged that the remedy would affect inmates outside the *Coleman* and *Plata* classes, but held that it would be impossible to reduce prison overcrowding to remedy health care conditions without affecting the inmate population as a whole. *Id.* at *77.

[42] 430 U.S. 817 (1977).

[43] *See Coleman*, 2009 WL 2430820, at *77–78.

[44] *See id.* at *79.

ed by Governor Arnold Schwarzenegger's prison reform team.[45] While some of the plaintiffs' experts testified that 130% might be too high of a cap,[46] others proposed that "operable capacity" was 145% of design capacity.[47] The court questioned the 145% figure because "[o]perable capacity does not take into account the ability to provide [medical and mental health] care," rendering it above the upper limit of acceptable capacity.[48] Based on the expert testimony, the court determined that the maximum prison population "*must* be reduced to some level between 130% and 145% design capacity . . . to attain constitutional compliance."[49] In designing "narrowly tailored" prospective relief, the court proceeded with "caution" and set the required reduction at 137.5% of design capacity by splitting the difference between 130% and 145%.[50]

The court concluded by evaluating the potential impact a prisoner release order would have on public safety and addressing several methods the state could use to achieve the reduction. The court addressed five different proposals[51] that had been presented by the Governor and other experts, and determined that they would not harm public safety or inhibit the operation of the criminal justice system.[52] Having found that it satisfied the PLRA requirements, the court ordered the state to develop a proposal to reduce the prison population to 137.5% of design capacity over two years.[53]

The issuance of the *Coleman* court's remedial order was the first time since the passage of the PLRA that a court issued a prisoner release order over a state's objection.[54] In doing so, the court's opinion

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[45] *Id.* at *81.

[46] *Id.* Another expert testified that 100% design capacity would be "pushing against the limits of the number of prisoners that [prisons] could safely and humanely hold." *Id.* at *80 (internal quotation mark omitted).

[47] *Id.* at *82 (internal quotation marks omitted).

[48] *Id.* The 145% estimate "did *not* specifically contemplate, take into account, or attempt to calculate the *additional* space and staffing levels that would be required to provide constitutionally adequate mental health and medical care." *Id.*

[49] *Id.* at *83.

[50] *Id.* In doing so, the court acknowledged that coming up with a specific percentage was "not an exact science." *Id.* at *79 (internal quotation marks omitted).

[51] The court addressed the following proposals: "early release through expansion of good time credits," *id.* at *88, "diversion of technical parole violators," *id.* at *91, "diversion of low-risk offenders with short sentences," *id.* at *94, "expansion of evidence-based rehabilitative programming," *id.* at *96, and sentencing reform, *id.* at *97.

[52] *See id.* at *87 ("There was overwhelming agreement among experts . . . that it is 'absolutely' possible to reduce the prison population in California safely and effectively."). Governor Schwarzenegger had already presented a reduction plan designed to reduce the prison population by approximately 37,000 inmates, although it failed to receive legislative support. Michael Rothfeld, *Gov.'s Prison Plan Seeks Time To Reduce Numbers*, L.A. TIMES, Sept. 19, 2009, at A10.

[53] *Coleman*, 2009 WL 243820, at *116.

[54] Appellants' Application for a Stay Pending This Court's Final Disposition of Appeal Pursuant to 28 U.S.C. § 1253 at 3, Schwarzenegger v. Plata, No. 09A234 (U.S. Sept. 4, 2009). Pre-

brought to light an inadequacy in the PLRA's procedural system. The PLRA's requirement that prisoner release orders be made by a three-judge court[55] serves to bifurcate the remedial stage of litigation and removes direct control from the district court judge. Although the statute does not explicitly require that three-judge courts limit themselves to the consideration of prisoner release orders, the statute's separation of prisoner release orders from other remedial stages implies such a limitation.[56] By bifurcating the remedial process, the PLRA encourages courts to engage in an arbitrary analysis of prisoner reduction, limits courts' ability to create a single comprehensive remedy, and complicates the litigation process. Absent a specialized and independent three-judge court, the district court judge could have engaged in holistic analysis of appropriate remedies and allowed the state to fashion a comprehensive relief proposal that included a prisoner reduction plan.

The PLRA's remedial bifurcation encouraged the court to select a capacity figure that was originally meant to interact with other solutions. The expert witnesses varied widely in their assessments of the maximum capacity at which the prisons could provide constitutional levels of care, suggesting that there was not one "correct" figure on which the court could settle.[57] However, the expert witnesses uniformly based their suggested levels on the assumption that other additional measures would be adopted to improve the system's health care services.[58] The court did not order these other measures when it set the reduction level, and so it may well have adopted a reduction level that was inconsistent with the remedial measures that the district court found most appealing or achievable. The PLRA's requirement of a bi-

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vious release orders under the PLRA were approved as part of agreements that had prior approval from both parties. John Boston, *The Prison Litigation Reform Act: The New Face of Court Stripping*, 67 BROOK. L. REV. 429, 446 n.67 (2001).

55 18 U.S.C. § 3626 (a)(3)(B) (2006).

56 The only duty that three-judge courts are given in the PLRA is to consider prisoner release orders. *See* Pub. L. No. 103-134, tit. VIII, 110 Stat. 1321-66 (2006) (codified in scattered sections of 11, 18, 28, and 42 U.S.C.). Because district court judges have already heard other remedial requests and prior remedial orders remain in effect, it is unlikely that the three-judge courts would consider issuing remedial orders in addition to prisoner release orders. Given the infrequent use of the three-judge court, however, this issue has not been explored. *See, e.g.*, Mark Tushnet & Larry Yackle, *Symbolic Statutes and Real Laws: The Pathologies of the Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act*, 47 DUKE L.J. 1, 57 n.282 (1997) ("If the three-judge court finds a release order unnecessary, may it nonetheless enter some other form of relief?").

57 Additionally, the level of overcrowding at which constitutional levels of health care can be provided varies between facilities, with older facilities requiring "slightly lower population limitations, based on the quality of infrastructure and availability of treatment space." *Coleman*, 2009 WL 2430820, at *81.

58 The plaintiffs suggested that 130% of design capacity would be "sufficient" to remedy the violations and would "give prison officials and staff the *ability* to provide the necessary programs and services for California's prisoners." *Id.* (emphasis added) (internal quotation mark omitted).

furcated remedial process encouraged the court to issue an order that included only a percentage reduction instead of a comprehensive reform package that included additional remedies.[59]

Procedurally, the PLRA results in the monitoring of prisoner release orders by the three-judge court and the monitoring of prior remedial efforts by the district court judge, who is only a single member of the court. Given the range of estimates regarding the appropriate level of prisoner population reduction required to provide constitutional levels of care,[60] it seems likely that at the end of the two-year implementation period the court may need to consider further population reduction.[61] However, because the prisoner release order is restricted by the PLRA's requirements, any further reductions will require the three-judge court to engage in a new round of PLRA analysis to determine if additional reduction is necessary. These cumbersome procedural requirements are likely to draw out the litigation process for far longer than necessary, resulting in continued deprivation of medical and mental health care for California prisoners.

The court's justification of its remedial approach by means of a comparison with *Bounds v. Smith* illustrates the procedural limitations introduced by the PLRA.[62] In *Bounds*, the district court found that prisoners were being unconstitutionally deprived of access to the courts.[63] Instead of mandating a specific remedy, the court "ordered [the government] to devise a remedy for the violation."[64] The court's remedy in *Coleman* is similar in that it granted the state the authority to determine *how* it will comply with the prisoner release order. But in *Bounds*, the state's proposal constituted the entire remedial effort to reach constitutional standards,[65] whereas California's proposal for prisoner population reduction may only be aimed at achieving one element of a larger remedial scheme.

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[59] The disconnect between the court's remedial proposal and the experts' testimony was especially evident when, out of "caution," the court simply split the difference between the two highest numbers presented during expert testimony instead of selecting the figure that it found most credible. *See id.* at *83. Given the specificity of the expert's figures, the court's selected overcrowding limit appears arbitrary because it was not equivalent to any of the limits in the studies presented. *See id.* at *79–83.

[60] *See id.* at *79–83.

[61] The court acknowledged that this process would require multiple steps and continued monitoring and litigation. *See id.* at *83. This admission assumes that California will attempt to comply with the court's order. The proposal submitted to the court by the state on September 18, 2009, included a prisoner reduction of only about 20,000 inmates over five years — half of the reduction the court demanded in more than twice the time. *See* Rothfeld, *supra* note 52.

[62] *See Coleman*, 2009 WL 2430820, at *77.

[63] Bounds v. Smith, 430 U.S. 817, 818 (1977).

[64] *Id.* at 832.

[65] *See id.* at 830–32.

Instead of bifurcating the remedial process by using a three-judge court, the PLRA should allow the district court judge to order an integrated plan that includes a prisoner reduction order as an *element* of the solution after exhausting other remedial options. The *Coleman* court was permitted only to set a population cap on California's prisons, despite the recognition that reducing prison overcrowding was not by itself a sufficient step toward providing constitutional care.[66] With an integrated remedial order, the state could have proposed a solution that included a prisoner reduction element. This process would closely model the type of remedial plans that the district court judge is currently able to issue, with the exception that the state could be ordered to use population reduction as an element of the plan. The court would not need to specify how the state should achieve lower prison population levels and adequate health care,[67] but rather it could require the state to present a solution, as in *Bounds*. This procedure would streamline the remedial process and help prisoners receive constitutional levels of health care more quickly.

The PLRA's inclusion of a three-judge court at the prisoner release stage of litigation was influenced by congressional concern that federal judges were being too lenient in prison reform cases.[68] Most of the requirements of the PLRA, such as showing that less restrictive measures have been ordered and that overcrowding is the primary cause of the constitutional violations, represent effective substantive efforts to limit the power of federal judges while still assuring that prisoner reduction orders can be made in exceptional cases. However, leaving the prisoner release stage to the independent determination of a three-judge court unnecessarily bifurcates the remedial process and undermines its effectiveness. Eliminating the three-judge court requirement while leaving the rest of the PLRA intact would strengthen the remedial process without significantly increasing judicial power.

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[66] *Coleman*, 2009 WL 2430820, at *58.

[67] *See, e.g.*, Lewis v. Casey, 518 U.S. 343, 362–63 (1996) (disapproving of court orders that do not allow state prison officials to determine the remedial measure that the state will adopt); Newman v. Alabama, 683 F.2d 1312, 1320 (11th Cir. 1982) ("A federal court . . . is ill-equipped to involve itself intimately in the administration of the prison system." (citing Procunier v. Martinez, 416 U.S. 396, 405 (1974))).

[68] *See* Gilmore v. California, 220 F.3d 987, 996–97 (9th Cir. 2000). These restrictions have been described as making it "unlikely that [a prisoner release order] will be imposed, or even sought, in the future." *Developments in the Law—The Law of Prisons*, 115 HARV. L. REV. 1838, 1858 (2002); *see also* Vicki C. Jackson, *Introduction: Congressional Control of Jurisdiction and the Future of the Federal Courts — Opposition, Agreement, and Hierarchy*, 86 GEO. L.J. 2445, 2450 (1998) ("[T]he three judge court requirement . . . [is] often understood in the federal courts canon as involving a tension or pull between the substantive outcomes being reached by the courts and Congress's effort to use its control of jurisdiction to mitigate or change the effects of the courts' substantive leanings.").