



I DANNATI DELLE CARCERI.
UNA PRONUNCIA DELLA CORTE SUPREMA DEGLI STATI UNITI:
UNA LEZIONE DA SEGUIRE

Appendice. Sentenza *Brown v. Plata*, 131 S. Ct. 1910 US Cal. (2011)

Elisabetta Grande

Supreme Court of the United States

Edmund G. BROWN, Jr., Governor of California, et al., Appellants, v.

Marciano PLATA et al.

No. 09-1233.

Argued Nov. 30, 2010.

Decided May 23, 2011.

(Cite as: 131 S.Ct. 1910)

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined. ALITO, J., filed a dissenting opinion, in which ROBERTS, C.J., joined.

This case arises from serious constitutional violations in California's prison system. The violations have persisted for years. They remain uncorrected. The appeal comes to this Court from a three-judge District Court order directing California to remedy two ongoing violations of the Cruel and Unusual Punishments Clause, a guarantee binding on the States by the Due Pro-

cess Clause of the Fourteenth Amendment. The violations are the subject of two class actions in two Federal District Courts. The first involves the class of prisoners with serious mental disorders. That case is *Coleman v. Brown*. The second involves prisoners with serious medical conditions. That case is *Plata v. Brown*. The order of the three-judge District Court is applicable to both cases.

After years of litigation, it became apparent that a remedy for the constitutional violations would not be effective absent a reduction in the prison system population. (...)

At the time of trial, California's correctional facilities held some 156,000 persons. This is nearly double the number that California's prisons were designed to hold, and California has been ordered to reduce its prison population to 137.5% of design capacity. By the three-judge court's own estimate, the required population reduction could be as high as 46,000 persons. Although the State has reduced the population by at least 9,000 persons during the pendency of this appeal, this means a further reduction of 37,000 persons could be required. As will be noted, the reduction

need not be accomplished in an indiscriminate manner or in these substantial numbers if satisfactory, alternate remedies or means for compliance are devised. The State may employ measures, including good-time credits and diversion of low-risk offenders and technical parole violators to community-based programs, that will mitigate the order's impact. The population reduction potentially required is nevertheless of unprecedented sweep and extent.

(...)

Overcrowding has overtaken the limited resources of prison staff; imposed demands well beyond the capacity of medical and mental health facilities; and created unsanitary and unsafe conditions that make progress in the provision of care difficult or impossible to achieve. The overcrowding is the "primary cause of the violation of a Federal right", 18 U.S.C. § 3626(a)(3)(E)(i), specifically the severe and unlawful mistreatment of prisoners through grossly inadequate provision of medical and mental health care.

This Court now holds that the PLRA does authorize the relief afforded in this case and that the court-mandated population limit is necessary to remedy the violation of prisoners' constitutional rights. The order of the three-judge court, subject to the right of the State to seek its modification in appropriate circumstances, must be affirmed.

I

A

The degree of overcrowding in California's prisons is exceptional. California's prisons are designed to house a population just under 80,000, but at the time of the three-judge court's decision the population was almost double that. The State's prisons had operated at around 200% of design capacity for at least 11 years. Prisoners are crammed into spaces neither designed nor intended to house inmates. As many as 200 prisoners may live in a gymnasium, monitored by as few as two or three correctional officers. App. 1337-1338, 1350; see Appendix B, *infra*. As many as 54 prisoners may share a single toilet. App. 1337. The Corrections Independent Review

1. A similar conclusion was reached by the Little Hoover Commission, a bipartisan and independent state body, which stated that "[o]vercrowded conditions inside the prison walls are unsafe for inmates and staff", Solving California's Corrections Crisis: Time is Running Out 17 (Jan. 2007), and that "California's correctional system is in a tailspin", *id.*, at i. At trial, current and former California prison officials also testified to the degree of overcrowding. Jeanne Woodford, who recently administered California's prison system, stated that "[o]vercrowding in the [California Department of Corrections and Rehabilitation (CDCR)] is extreme, its effects are pervasive and it is preventing the Department from providing adequate mental and medical health care to prisoners". Juris. App. 84a. Matthew Cate, the head of the California prison system, stated that "overpopulation makes everything we do more difficult". *Ibid.* And Robin Dezember, chief deputy secretary of Correctional Healthcare Services, stated that "we are terribly overcrowded in our prison system" and "overcrowding has negative effects on everybody in the prison system". Tr. 853, 856. Experts from outside California offered similar assessments. Doyle Wayne Scott, the former head of corrections in Texas, described conditions in California's prisons as "appalling," "inhumane," and "unacceptable" and stated that "[i]n more than 35 years of prison work experience, I have never seen anything like it". App. 1337. Joseph Lehman, the former head of correctional systems in Washington, Maine, and Pennsylvania, concluded that "[t]here is no question that California's prisons are overcrowded" and that "this is an emergency situation; it calls for drastic and immediate action". *Id.*, at 1312.

2 Documenti per la storia del tempo presente



Panel, a body appointed by the Governor and composed of correctional consultants and representatives from state agencies, concluded that California's prisons are "severely overcrowded, imperiling the safety of both correctional employees and inmates"¹. Juris. Statement App., O.T.2009, No. 09-416, p. 56a (hereinafter Juris. App.). In 2006, then - Governor Schwarzenegger declared a state of emergency in the prisons, as "immediate action is necessary to prevent death and harm caused by California's severe prison overcrowding". *Id.*, at 61a. The consequences of overcrowding identified by the Governor include "increased, substantial risk for transmission of infectious illness" and a suicide rate "approaching an average of one per week". *Ibid.* Prisoners in California with serious mental illness do not receive minimal, adequate care. Because of a shortage of treatment beds, suicidal inmates may be held for prolonged periods in telephone-booth sized cages without toilets. See Appendix C, *infra*. A psychiatric expert reported observing an inmate who had been held in such a cage for nearly 24 hours, standing in a pool of his own urine, unresponsive and nearly catatonic. Prison officials explained they had "no place to put him". App. 593. Other inmates awaiting care may be held for months in administrative segregation, where they endure harsh and isolated con-

ditions and receive only limited mental health services. Wait times for mental health care range as high as 12 months. *Id.*, at 704. In 2006, the suicide rate in California's prisons was nearly 80% higher than the national average for prison populations; and a court-appointed Special Master found that 72.1% of suicides involved "some measure of inadequate assessment, treatment, or intervention, and were therefore most probably preventable"². *Id.*, at 1781. Prisoners suffering from physical illness also receive severely deficient care. California's prisons were designed to meet the medical needs of a population at 100% of design capacity and so have only half the clinical space needed to treat the current population. *Id.*, at 1024. A correctional officer testified that, in one prison, up to 50 sick inmates may be held together in a 12-by 20-foot cage for up to five hours awaiting treatment. Tr. 597-599. The number of staff is inadequate, and prisoners face significant delays in access to care. A prisoner with severe abdominal pain died after a 5-week delay in referral to a specialist; a prisoner with "constant and extreme" chest pain died after an 8-hour delay in evaluation by a doctor; and a prisoner died of testicular cancer after a "failure of MDs to work up for cancer in a young man with 17 months of testicular pain"³. California Prison Health Care Re-

2. At the time of the three-judge court's decision, 2006 was the most recent year for which the Special Master had conducted a detailed study of suicides in the California prisons. The Special Master later issued an analysis for the year 2007. This report concluded that the 2007 suicide rate was "a continuation of the CDCR's pattern of exceeding the national prison suicide rate". Record in No. 2:90-CV-00520-LKK-JFM (ED/ND Cal.), Doc. 3677, p. 1. The report found that the rate of suicides involving inadequate assessment, treatment, or intervention had risen to 82% and concluded that "[t]hese numbers clearly indicate no improvement in this area during the past several years, and possibly signal a trend of ongoing deterioration". *Id.*, at 12. No detailed study has been filed since then, but in September 2010 the Special Master filed a report stating that "the data for 2010 so far is not showing improvement in suicide prevention". App. 868.

3. Because plaintiffs do not base their case on deficiencies in care provided on any one occasion, this Court has no occasion to consider whether these instances of delay – or any other

ceivership Corp., K. Imai, Analysis of CDCR Death Reviews 2006, pp. 6-7 (Aug. 2007). Doctor Ronald Shansky, former medical director of the Illinois state prison system, surveyed death reviews for California prisoners. He concluded that extreme departures from the standard of care were “widespread”, Tr. 430, and that the proportion of “possibly preventable or preventable” deaths was “extremely high”. *Id.*, at 429⁴. Many more prisoners, suffering from severe but not life-threatening conditions, experience prolonged illness and unnecessary pain.

B

These conditions are the subject of two federal cases. The first to commence, *Coleman v. Brown*, was filed in 1990. *Coleman* involves the class of seriously mentally ill persons in California prisons. Over 15 years

ago, in 1995, after a 39-day trial, the *Coleman* District Court found “overwhelming evidence of the systematic failure to deliver necessary care to mentally ill inmates” in California prisons. *Coleman v. Wilson*, 912 F.Supp. 1282, 1316 (E.D.Cal.). The prisons were “seriously and chronically understaffed,” *id.*, at 1306, and had “no effective method for ensuring... the competence of their staff,” *id.*, at 1308. The prisons had failed to implement necessary suicide-prevention procedures, “due in large measure to the severe understaffing.” *Id.*, at 1315. Mentally ill inmates “languished for months, or even years, without access to necessary care.” *Id.*, at 1316. “They suffer from severe hallucinations, [and] they decompensate into catatonic states.” *Ibid.* The court appointed a Special Master to oversee development and implementation of a reme-

particular deficiency in medical care complained of by the plaintiffs – would violate the Constitution under *Estelle v. Gamble*, 429 U.S. 97, 104-105, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), if considered in isolation. Plaintiffs rely on systemwide deficiencies in the provision of medical and mental health care that, taken as a whole, subject sick and mentally ill prisoners in California to “substantial risk of serious harm” and cause the delivery of care in the prisons to fall below the evolving standards of decency that mark the progress of a maturing society. *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994).

4. In 2007, the last year for which the three-judge court had available statistics, an analysis of deaths in California’s prisons found 68 preventable or possibly preventable deaths. California Prison Health Care Receivership Corp., K. Imai, Analysis of Year 2007 Death Reviews 18 (Nov. 2008). This was essentially unchanged from 2006, when an analysis found 66 preventable or possibly preventable deaths. *Ibid.* These statistics mean that, during 2006 and 2007, a preventable or possibly preventable death occurred once every five to six days. Both preventable and possibly preventable deaths involve major lapses in medical care and are a serious cause for concern. In one typical case classified as a possibly preventable death, an analysis revealed the following lapses: “16 month delay in evaluating abnormal liver mass; 8 month delay in receiving regular chemotherapy...; multiple providers fail to respond to jaundice and abnormal liver function tests causing 17 month delay in diagnosis.” California Prison Health Care Receivership Corp., K. Imai, Analysis of Year 2009 Inmate Death Reviews – California Prison Health Care System 12 (Sept. 2010) (hereinafter 2009 Death Reviews). The three-judge court did not have access to statistics for 2008, but in that year the number of preventable or possibly preventable deaths held steady at 66. California Prison Health Care Receivership Corp., K. Imai, Analysis of Year 2008 Death Reviews 9 (Dec. 2009). In 2009, the number of preventable or possibly preventable deaths dropped to 46. 2009 Death Reviews 11, 13. The three-judge court could not have anticipated this development, and it would be inappropriate for this Court to evaluate its significance for the first time on appeal. The three-judge court should, of course, consider this and any other evidence of improved conditions when considering future requests by the State for modification of its order. See *infra*, at 1945-1947.



dial plan of action. In 2007, 12 years after his appointment, the Special Master in *Coleman* filed a report stating that, after years of slow improvement, the state of mental health care in California's prisons was deteriorating. App. 489. The Special Master ascribed this change to increased overcrowding. The rise in population had led to greater demand for care, and existing programming space and staffing levels were inadequate to keep pace. Prisons had retained more mental health staff, but the "growth of the resource [had] not matched the rise in demand." *Id.*, at 482. At the very time the need for space was rising, the need to house the expanding population had also caused a "reduction of programming space now occupied by inmate bunks." *Id.*, at 479. The State was "facing a four to five-year gap in the availability of sufficient beds to meet the treatment needs of many inmates/patients." *Id.*, at 481. "[I]ncreasing numbers of truly psychotic inmate/patients are trapped in [lower levels of treatment] that cannot meet their needs." *Ibid.* The Special Master concluded that many early "achievements have succumbed to the inexorably rising tide of population, leaving behind growing frustration and despair." *Id.*, at 489.

C

The second action, *Plata v. Brown*, involves the class of state prisoners with serious medical conditions. After this action commenced in 2001, the State conceded that deficiencies in prison medical care violated prisoners' Eighth Amendment rights. The State stipulated to a remedial injunction. The State failed to comply with that injunction, and in 2005 the court appointed a Receiver to oversee remedial efforts. The court found that "the California prison medical care system is broken beyond repair," resulting in an "unconscionable de-

gree of suffering and death". App. 917. The court found: "[I]t is an uncontested fact that, on average, an inmate in one of California's prisons needlessly dies every six to seven days due to constitutional deficiencies in the [California prisons'] medical delivery system". *Ibid.* And the court made findings regarding specific instances of neglect, including the following:

"[A] San Quentin prisoner with hypertension, diabetes and renal failure was prescribed two different medications that actually served to exacerbate his renal failure. An optometrist noted the patient's retinal bleeding due to very high blood pressure and referred him for immediate evaluation, but this evaluation never took place. It was not until a year later that the patient's renal failure was recognized, at which point he was referred to a nephrologist on an urgent basis; he should have been seen by the specialist within 14 days but the consultation never happened and the patient died three months later." *Id.*, at 928 (citations omitted).

Prisons were unable to retain sufficient numbers of competent medical staff, *id.*, at 937, and would "hire any doctor who had 'a license, a pulse and a pair of shoes,'" *id.*, at 926. Medical facilities lacked "necessary medical equipment" and did "not meet basic sanitation standards". *Id.*, at 944. "Exam tables and counter tops, where prisoners with... communicable diseases are treated, [were] not routinely disinfected." *Ibid.*

In 2008, three years after the District Court's decision, the Receiver described continuing deficiencies in the health care provided by California prisons:

"Timely access is not assured. The number of medical personnel has been inadequate, and competence has not been assured... Adequate housing for the disabled and

aged does not exist. The medical facilities, when they exist at all, are in an abysmal state of disrepair. Basic medical equipment is often not available or used. Medications and other treatment options are too often not available when needed... Indeed, it is a misnomer to call the existing chaos a 'medical delivery system' – it is more an act of desperation than a system." Record in No. 3:01-CV-01351-TEH (ND Cal.), Doc. 1136, p. 5.

A report by the Receiver detailed the impact of overcrowding on efforts to remedy the violation. The Receiver explained that "overcrowding, combined with staffing shortages, has created a culture of cynicism, fear, and despair which makes hiring and retaining competent clinicians extremely difficult".

App. 1031. "[O]vercrowding, and the resulting day to day operational chaos of the [prison system], creates regular 'crisis' situations which... take time [and] energy... away from important remedial programs". *Id.*, at 1035. Overcrowding had increased the incidence of infectious disease, *id.*, at 1037-1038, and had led to rising prison violence and greater reliance by custodial staff on lockdowns, which "inhibit the delivery of medical care and increase the staffing necessary for such care". *Id.*, at 1037. "Every day", the Receiver reported, "California prison wardens and health care managers make the difficult decision as to which of the class actions, *Coleman*... or *Plata* they will fail to comply with because of staff shortages and patient loads". *Id.*, at 1038. D

The *Coleman* and *Plata* plaintiffs, believing that a remedy for unconstitutional medical and mental health care could not be achieved without reducing overcrowding, moved their respective District Courts to convene a three-judge court empowered

under the PLRA to order reductions in the prison population. The judges in both actions granted the request, and the cases were consolidated before a single three-judge court. The State has not challenged the validity of the consolidation in proceedings before this Court, so its propriety is not presented by this appeal.

The three-judge court heard 14 days of testimony and issued a 184-page opinion, making extensive findings of fact. The court ordered California to reduce its prison population to 137.5% of the prisons' design capacity within two years. Assuming the State does not increase capacity through new construction, the order requires a population reduction of 38,000 to 46,000 persons. Because it appears all but certain that the State cannot complete sufficient construction to comply fully with the order, the prison population will have to be reduced to at least some extent. The court did not order the State to achieve this reduction in any particular manner. Instead, the court ordered the State to formulate a plan for compliance and submit its plan for approval by the court.

The State appealed to this Court pursuant to 28 U.S.C. § 1253, and the Court postponed consideration of the question of jurisdiction to the hearing on the merits. *Schwarzenegger v. Plata*, 560 U.S. –, 130 S.Ct. 3413, 177 L.Ed.2d 322 (2010). (...) The three-judge court credited substantial evidence that prison populations can be reduced in a manner that does not increase crime to a significant degree. Some evidence indicated that reducing overcrowding in California's prisons could even improve public safety. Then-Governor Schwarzenegger, in his emergency proclamation on overcrowding, acknowledged that "overcrowding causes harm to people and property, leads to inmate unrest and misconduct, ...



and increases recidivism as shown within this state and in others”. Juris. App. 191a-192a. The former warden of San Quentin and acting secretary of the California prison system testified that she “absolutely believe[s] that we make people worse, and that we are not meeting public safety by the way we treat people”⁵. *Id.*, at 129a. And the head of Pennsylvania’s correctional system testified that measures to reduce prison population may “actually improve on public safety because they address the problems that brought people to jail.” Tr. 1552-1553. Expert witnesses produced statistical evidence that prison populations had been lowered without adversely affecting public safety in a number of jurisdictions, including certain counties in California, as well as Wisconsin, Illinois, Texas, Colorado, Montana, Michigan, Florida, and Canada. Juris⁶. App. 245a. Washington’s former secretary of correc-

tions testified that his State had implemented population reduction methods, including parole reform and expansion of good time credits, without any “deleterious effect on crime”. Tr.2008-2009. In light of this evidence, the three-judge court concluded that any negative impact on public safety would be “substantially offset, and perhaps entirely eliminated, by the public safety benefits” of a reduction in overcrowding. Juris. App. 248a.

The court found that various available methods of reducing overcrowding would have little or no impact on public safety. Expansion of good-time credits would allow the State to give early release to only those prisoners who pose the least risk of reoffending. Diverting low-risk offenders to community programs such as drug treatment, day reporting centers, and electronic monitoring would likewise lower the prison population without releasing violent

5. The former head of correctional systems in Washington, Maine, and Pennsylvania, likewise referred to California’s prisons as “criminogenic”. Juris. App. 191a. The Yolo County chief probation officer testified that “it seems like [the prisons] produce additional criminal behavior”. *Id.*, at 190a. A former professor of sociology at George Washington University, reported that California’s present recidivism rate is among the highest in the Nation. App. 1246. And the three-judge court noted the report of California’s Little Hoover Commission, which stated that “[e]ach year, California communities are burdened with absorbing 123,000 offenders returning from prison, often more dangerous than when they left”. Juris. App. 191a.

6. Philadelphia’s experience in the early 1990’s with a federal court order mandating reductions in the prison population was less positive, and that history illustrates the undoubted need for caution in this area. One congressional witness testified that released prisoners committed 79 murders and multiple other offenses. See Hearing on S. 3 et al. before the Senate Committee on the Judiciary, 104th Cong., 1st Sess., 45 (1995) (statement of Lynne Abraham, District Attorney of Philadelphia). Lead counsel for the plaintiff class in that case responded that “[t]his inflammatory assertion has never been documented”. *Id.*, at 212 (statement of David Richman). The Philadelphia decree was also different from the order entered in this case. Among other things, it “prohibited the City from admitting to its prisons any additional inmates, except for persons charged with, or convicted of, murder, forcible rape, or a crime involving the use of a gun or knife in the commission of an aggravated assault or robbery”. *Harris v. Reeves*, 761 F. Supp. 382, 384-385 (E.D.Pa.1991); see also Crime and Justice Research Institute, J. Goldkamp & M. White, Restoring Accountability in Pretrial Release: The Philadelphia Pretrial Release Supervision Experiments 6-8 (1998). The difficulty of determining the precise relevance of Philadelphia’s experience illustrates why appellate courts defer to the trier of fact. The three-judge court had the opportunity to hear testimony on population reduction measures in other jurisdictions and to ask relevant questions of informed expert witnesses.

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convicts⁷. The State now sends large numbers of persons to prison for violating a technical term or condition of their parole, and it could reduce the prison population by punishing technical parole violations through community-based programs. This last measure would be particularly beneficial as it would reduce crowding in the reception centers, which are especially hard hit by overcrowding. See *supra*, at 1934-1935. The court's order took account of public safety concerns by giving the State substantial flexibility to select among these and other means of reducing overcrowding.

(...)

These observations reflect the fact that the three-judge court's order, like all continu-

ing equitable decrees, must remain open to appropriate modification. They are not intended to cast doubt on the validity of the basic premise of the existing order. The medical and mental health care provided by California's prisons falls below the standard of decency that inheres in the Eighth Amendment. This extensive and ongoing constitutional violation requires a remedy, and a remedy will not be achieved without a reduction in overcrowding. The relief ordered by the three-judge court is required by the Constitution and was authorized by Congress in the PLRA. The State shall implement the order without further delay.

The judgment of the three-judge court is affirmed. *It is so ordered.*

7. Expanding such community-based measures may require an expenditure of resources by the State to fund new programs or expand existing ones. The State complains that the order therefore requires it to "divert" savings that will be achieved by reducing the prison population and that setting budgetary priorities in this manner is a "severe, unlawful intrusion on the State authority." Brief for Appellants 55. This argument is not convincing. The order does not require the State to use any particular approach to reduce its prison population or allocate its resources.