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5 IN THE UNITED STATES DISTRICT COURTS
6 FOR THE EASTERN DISTRICT OF CALIFORNIA
7 AND THE NORTHERN DISTRICT OF CALIFORNIA
8 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
9 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE
10

11 RALPH COLEMAN, et al.,
12 Plaintiffs,
13 v.
14 EDMUND G. BROWN JR., et al.,
15 Defendants.

NO. 2:90-cv-0520 LKK DAD (PC)

THREE-JUDGE COURT

16
17 MARCIANO PLATA, et al.,
18 Plaintiffs,
19 v.
20 EDMUND G. BROWN JR., et al.,
21 Defendants.

NO. C01-1351 TEH

THREE-JUDGE COURT

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' REQUEST FOR
EXTENSION OF DECEMBER 31,
2013 DEADLINE

22
23 WHEREAS the Court has read and considered the parties' filings in response to this
24 Court's January 13, 2014 Order;

25 WHEREAS defendants have represented that, in conformance with the terms of this
26 order, they will develop comprehensive and sustainable prison population-reduction reforms
27 and will consider the establishment of a commission to recommend reforms of state penal
28 and sentencing laws;

1 WHEREAS defendants have represented that they will not appeal or support an
2 appeal of this order, any subsequent order necessary to implement this order, or any order
3 issued by the Compliance Officer to be appointed in conformance herewith that is consistent
4 with the duties of the Compliance Officer as specified in this order, and will not move or
5 support a motion to terminate the relief contained in this order until at least two years after
6 the date of this order and such time as it is firmly established that compliance with the
7 137.5% design capacity benchmark is durable;

8 WHEREAS this order is issued in reliance on defendants' representations; and

9 WHEREAS the Court finds that the order below is narrowly tailored to the
10 constitutional violations identified by the *Plata* and *Coleman* courts, extends no further than
11 necessary to remedy those violations, and is the least intrusive possible remedy.

12 IT IS HEREBY ORDERED that:

13 1. The Court GRANTS defendants' request for an extension of time, but only to
14 February 28, 2016, to comply with this Court's June 30, 2011 Order to reduce California's
15 prison population to 137.5% design capacity.

16 2. The deadline to achieve the ordered reduction in the in-state adult institution
17 population to 137.5% design capacity is extended to **February 28, 2016**. Defendants will
18 meet the following interim and final population reduction benchmarks:

19 (a) 143% of design bed capacity by **June 30, 2014**;

20 (b) 141.5% of design bed capacity by **February 28, 2015**; and

21 (c) 137.5% of design bed capacity by **February 28, 2016**.

22 3. During the extension period, and as long as this Court maintains jurisdiction,
23 defendants shall not increase the current population level of approximately 8,900 inmates
24 housed in out-of-state facilities. Defendants shall also explore ways to attempt to reduce the
25 number of inmates housed in out-of-state facilities to the extent feasible.

26 4. The Court acknowledges that defendants intend to comply with this order in
27 part through a combination of contracting for additional in-state capacity in county jails,
28 community correctional facilities, and a private prison, and through newly enacted programs

1 including the development of additional measures regarding reforms to state penal and
2 sentencing laws designed to reduce the prison population. Defendants shall also immediately
3 implement the following measures:

4 (a) Increase credits prospectively for non-violent second-strike offenders
5 and minimum custody inmates. Non-violent second-strikers will be eligible to earn good
6 time credits at 33.3% and will be eligible to earn milestone credits for completing
7 rehabilitative programs. Minimum custody inmates will be eligible to earn 2-for-1 good time
8 credits to the extent such credits do not deplete participation in fire camps where inmates also
9 earn 2-for-1 good time credits;

10 (b) Create and implement a new parole determination process through
11 which non-violent second-strikers will be eligible for parole consideration by the Board of
12 Parole Hearings once they have served 50% of their sentence;

13 (c) Parole certain inmates serving indeterminate sentences who have
14 already been granted parole by the Board of Parole Hearings but have future parole dates;

15 (d) In consultation with the Receiver's office, finalize and implement an
16 expanded parole process for medically incapacitated inmates;

17 (e) Finalize and implement a new parole process whereby inmates who are
18 60 years of age or older and have served a minimum of twenty-five years of their sentence
19 will be referred to the Board of Parole Hearings to determine suitability for parole;

20 (f) Activate new reentry hubs at a total of 13 designated prisons to be
21 operational within one year from the date of this order;

22 (g) Pursue expansion of pilot reentry programs with additional counties and
23 local communities; and

24 (h) Implement an expanded alternative custody program for female inmates.

25 5. Defendants will report to this Court monthly on the status of measures being
26 taken to reduce the prison population, and on the current in-state and out-of-state adult prison
27 populations. The first report shall be submitted on the 15th of the month following the date
28 of this order and shall continue until further order of the Court.

1 6. The Court will appoint a Compliance Officer for the purpose of bringing
2 defendants into compliance with any missed benchmark by ordering inmate releases. If
3 compliance with any benchmark is not achieved within a 30-day period following the
4 expiration of any missed benchmark, the Compliance Officer shall, within seven days, direct
5 the release of the number of inmates necessary to achieve compliance with the missed
6 benchmark and the measures to be followed in selecting the prisoners to be released. The
7 authority of the Compliance Officer shall extend no further than ordering defendants to
8 release inmates necessary to ensure defendants' compliance with any missed benchmark.

9 (a) In selecting inmates for release, the Compliance Officer shall consider
10 public safety by minimizing any risk of violent re-offense. The Compliance Officer shall not
11 be authorized to order the release of condemned inmates or inmates serving a term of life
12 without the possibility of parole.

13 (b) The Compliance Officer shall have access to all necessary CDCR data
14 and personnel regarding the California prison population, including population projections,
15 risk assessments, recidivism data, statistical data, and prisoner files, and shall receive
16 administrative support from CDCR to the extent needed to carry out the Compliance
17 Officer's duties. In addition, the Compliance Officer may engage the services of a part-time
18 assistant and/or a part-time secretary upon a showing of good cause within the discretion of
19 this Court at a rate of pay to be approved by this Court should the parties disagree. If the
20 Compliance Officer finds good cause to question the accuracy of any data presented to him
21 or her, the Compliance Officer shall have the authority to verify the accuracy of such data.

22 (c) The Compliance Officer shall be compensated for all work or services
23 necessary to ensure compliance with a benchmark, should a benchmark be missed, and all
24 work or services necessary to verify the accuracy of any data presented to him or her by the
25 CDCR, should the Compliance Officer find good cause to question the accuracy of such data.
26 Defendants shall reasonably compensate the Compliance Officer on an hourly basis and for
27 reasonable expenses, and the provisions of 18 U.S.C. § 3626(f) shall not apply.
28

1 7. The Compliance Officer shall retain all powers, access to information, and
2 compensation granted under this order after the final 137.5% benchmark is reached and until
3 it is firmly established that defendants' compliance with the 137.5% benchmark is durable.
4 During this period after compliance with the final benchmark and before such compliance is
5 durable, if two of defendants' monthly reports, consecutive, report a prison population above
6 137.5% design capacity, the Compliance Officer shall, within seven days, direct the release
7 of the number of inmates necessary to bring the prison population to 137.5% design capacity.

8 8. The parties shall meet and confer to attempt to make a joint recommendation to
9 the Court regarding the selection of the Compliance Officer and an appropriate hourly rate of
10 compensation, which may be subject to increase annually. If the parties are not able to agree,
11 they may each recommend up to two candidates for the Court's consideration and a proposed
12 hourly rate. The parties shall file their recommendations, including a description of any
13 recommended candidate's qualifications and an explanation of any proposed hourly rate,
14 within 30 days of the date of this order. The selection of the Compliance Officer and
15 compensation rate rests solely within the Court's discretion, and the Court will not be limited
16 to the parties' recommendations, whether separate or joint.

17 9. To the extent that any state statutory, constitutional, or regulatory provisions,
18 except the California Public Resources Code, impede the implementation of this order or
19 defendants' ability to achieve the population reduction benchmarks, all such laws and
20 regulations are waived. Although the Court does not issue a general waiver of the Public
21 Resources Code, defendants may request waivers, as the need arises, of these statutory
22 provisions that are tailored to specific projects.

23 10. This Court shall maintain jurisdiction over this matter for as long as is
24 necessary to ensure that defendants' compliance with the 137.5% final benchmark is durable,
25 and such durability is firmly established.

26 11. Defendants shall, within 60 days of the date of this order, file with the
27 Compliance Officer under seal, the categories of prisoners who are least likely to reoffend or
28 who might otherwise be candidates for early release (the "Low Risk List") that this Court

1 previously ordered them to create. The Low Risk List shall not be viewed by the
2 Compliance Officer unless and until he or she is ordered to do so by this Court. Similarly,
3 this Court will not inspect the list unless circumstances so warrant. Defendants shall file an
4 amended list every 60 days, should changes to the list become appropriate.

5
6 **IT IS SO ORDERED.**

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8 Dated: 02/10/14



STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

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12 Dated: 02/10/14



LAWRENCE K. KARLTON
SENIOR UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF CALIFORNIA

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15
16 Dated: 02/10/14



THELTON E. HENDERSON
SENIOR UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

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NO. C01-1351 TEH
THREE-JUDGE COURT
OPINION RE: ORDER GRANTING
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DEFENDANTS' REQUEST FOR
EXTENSION OF DECEMBER 31,
2013 DEADLINE

20
21 In August 2009, this Court ordered defendants to reduce the California prison
22 population to 137.5% design capacity in order to remedy the unconstitutional condition of
23 mental and medical health care in California prisons. Today, the prison population remains
24 above 144% design capacity. Yet, it is at least as important now as it was then for the prison
25 population to be reduced to the limit ordered by this Court. In fact, it is even more important
26 now for defendants to take effective action that will provide a long-term solution to prison
27 overcrowding, as, without further action, the prison population is projected to continue to
28 increase and health conditions are likely to continue to worsen.

1 Since 2009, more and more states have come to recognize that, properly handled, the
2 release of prisoners held past the time necessary to serve the purposes of their incarceration
3 will not result in danger to the community, but rather may actually benefit both the prisoners
4 and their communities. Despite this fact, defendants have consistently refused to take
5 measures to reduce the California prison population. In the four and a half years between our
6 2009 order and the date of this opinion, defendants have instituted only one significant
7 measure to relieve overcrowding in California prisons: “Realignment,” a program that shifted
8 responsibility for criminals who commit non-serious, non-violent, and non-registerable sex
9 crimes from the state prison system to county jails. Apart from Realignment, defendants
10 have taken no significant steps toward reducing the prison population and relieving
11 overcrowding despite repeated orders by this Court requiring them to do so. Instead,
12 defendants have continually failed to implement any of the measures approved by this Court
13 and the Supreme Court that would have safely reduced the California prison population and
14 alleviated the unconstitutional conditions of medical and mental health care in the prisons.

15 Defendants now request an extension of time within which to comply fully with the
16 population reduction order. We are presented with two options. Plaintiffs have proposed
17 that we deny defendants’ request for an extension and order defendants to comply
18 immediately. Pursuant, however, to a recently enacted statute, Senate Bill 105 (“SB 105”),
19 defendants have informed this Court that, if instructed to comply immediately, they will do
20 so by sending thousands of California prisoners to out-of-state facilities. This solution is
21 neither durable nor desirable. It would result in thousands of prisoners being incarcerated
22 hundreds or thousands of miles from the support of their families, and in hundreds of
23 millions of dollars that could be spent on long-lasting prison reform being spent instead on
24 temporarily housing prisoners in out-of-state facilities. Moreover, we have consistently
25 demanded a “durable” solution to California prison overcrowding, and plaintiffs’ proposal
26 does not help to achieve that solution. See Apr. 11, 2013 Opinion & Order at 69 (“It is [the]
27 long-term obligation that defendants must bear in mind in achieving a ‘durable remedy’ to
28 the problem of prison crowding.”); June 20, 2013 Opinion & Order at 45 (“What is necessary

1 is a ‘durable’ solution to the problem of overcrowding if the underlying problem of the
2 deprivation of prisoners’ constitutional rights is to be resolved.”); Sept. 24, 2013 Order to
3 Meet and Confer (ordering the parties to explore “how this Court can ensure a durable
4 solution to the prison crowding problem”).

5 In contrast, belated as it may be, defendants appear to be prepared to take the
6 necessary steps toward achieving a durable solution, without additional costly and wasteful
7 litigation and delay. They have proposed an order whereby they will be granted a two-year
8 extension in which they will comply fully with the population reduction order of June 30,
9 2011, and the population will be reduced in three stages, or “benchmarks” – first in June of
10 this year, second in February 2015, and third and finally in February 2016. For the first time
11 under this order, there will be an effective mechanism which will ensure that these
12 benchmarks are met: a “Compliance Officer” who will have the authority to release prisoners
13 should defendants fail to reach one of the benchmarks, with the number of prisoners released
14 being the number necessary to bring defendants into compliance with the missed benchmark.

15 Further, during these two years, defendants have agreed to develop comprehensive and
16 sustainable prison population-reduction reforms, including considering the establishment of a
17 commission to recommend reforms of state penal and sentencing laws. They have also
18 agreed to immediately implement various population reduction measures, such as increasing
19 good time credits prospectively for non-violent second-strike offenders and minimum
20 custody inmates, implementing a new parole determination process by which second-striker
21 offenders will be eligible for parole after serving only 50% of their sentence, and expanding
22 parole for the elderly and medically infirm. In addition, as provided by SB 105, the two-year
23 extension will allow for hundreds of millions of dollars to be allocated to a “Recidivism
24 Reduction Fund” for activities designed to reduce the state’s prison population, including but
25 not limited to, reducing recidivism. Finally, defendants have represented to this Court that, if
26 a two year extension is granted, they will not appeal or support an appeal of the order
27 granting the extension, or of any of its provisions; nor will they appeal or support the appeal
28 of any subsequent order necessary to implement the extension order or any of its provisions,

1 nor any order issued by the Compliance Officer pursuant to the authority vested in him by
2 the extension order; nor will they move or support a motion to terminate any relief provided
3 for or extended by the extension order or any of its provisions until at least two years after
4 the date of the extension order and such time as it is firmly established that compliance with
5 the 137.5% design capacity benchmark is durable. This should bring to an end defendants'
6 continual appeals and requests for modification of this Court's orders.

7 Thus, while we are reluctant to extend the deadline for two more years, we also
8 acknowledge that defendants have agreed that, with such an extension, they will implement
9 measures that should result in a durable solution to prison overcrowding in California. We
10 recognize that these measures should have been adopted much earlier, that plaintiffs'
11 lawyers have made unceasing efforts to obtain immediate relief on behalf of their clients,
12 and that California prisoners deserve far better treatment than they have received from
13 defendants over the past four and a half years. Similarly, California's citizens have incurred
14 far greater costs, both financial and otherwise, as a result of defendants' heretofore
15 unyielding resistance to compliance with this Court's orders. Finally, we recognize that this
16 Court must also accept part of the blame for not acting more forcefully with regard to
17 defendants' obduracy in the face of its continuing constitutional violations. Nevertheless,
18 resolving the conditions in California prisons for the long run, and not merely for the next
19 few months, is of paramount importance to this Court as well as to the people of this State.

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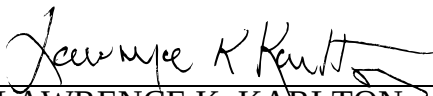
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1 For this reason, we grant defendants a two-year extension of time within which to comply
2 with the population reduction order under the terms and conditions stated in the order filed
3 simultaneously with this opinion.
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6 Dated: 02/10/14


STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

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10 Dated: 02/10/14


LAWRENCE K. KARLTON
SENIOR UNITED STATES DISTRICT JUDGE
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