

In The
Supreme Court of the United States

GOVERNOR EDMUND G. BROWN JR., et al.,

Appellants,

v.

MARCIANO PLATA AND RALPH COLEMAN, et al.,

Appellees.

**On Appeals From The United States District Courts
For The Eastern District Of California
And The Northern District Of California**

**AMICUS CURIAE BRIEF BY THE CALIFORNIA
STATE ASSOCIATION OF COUNTIES AND THE
CHIEF PROBATION OFFICERS OF CALIFORNIA
IN SUPPORT OF APPELLANTS**

ROGER H. GRANBO
Counsel of Record
Assistant County Counsel
648 Kenneth Hahn Hall
of Administration
500 West Temple Street
Los Angeles, CA 90012
Telephone: (213) 974-1609
rgranbo@counsel.lacounty.gov

JENNIFER B. HENNING
Litigation Counsel
CALIFORNIA STATE ASSOCIATION
1100 K Street, Suite 101
Sacramento, CA 95814
Telephone: (916) 327-7535
jhenning@counties.org

Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTERESTS OF THE AMICI CURIAE.....	1
SUMMARY OF THE ARGUMENTS	4
REASONS WHY THE THREE-JUDGE COURT'S ORDER IMPOSING ADDITIONAL INJUNCTIVE RELIEF SHOULD BE STAYED OR REVIEWED ON AN EXPEDITED BASIS.....	7
I. PUBLIC SAFETY REALIGNMENT CREATED A PROFOUND SHIFT IN PRISONER MANAGEMENT IN CALIFORNIA, AND SHOULD BE CAREFULLY CONSIDERED BEFORE REQUIRING ADDITIONAL PRISONER RELEASES.....	7
II. RELEASE OF HIGHER RISK OFFENDERS JEOPARDIZES PUBLIC SAFETY AND BURDENS COUNTY RESOURCES, WHICH ARE DEDICATED TO SUCCESSFULLY IMPLEMENTING REALIGNMENT	11
CONCLUSION.....	13

TABLE OF AUTHORITIES

Page

CASES

Brown v. Plata, 131 S.Ct. 1910 (2011)2, 7

Coleman v. Brown/Plata v. Brown, ___
 F.Supp.2d ___, Nos. 2:90-CV-520-LKK, C01-
 1351-THE, 2013 WL 3326873 (E.D.Cal., N.D.
 Cal. June 20, 2013)12

STATUTES

18 U.S.C. § 3626(a)(1)(A).....7, 13

Cal. Penal Code § 1170(h)8

Cal. Penal Code § 3000.08.....9

Cal. Penal Code § 3056.....8

Cal. Penal Code §§ 3450, *et seq.*.....8

OTHER AUTHORITIES

Calif. Assem. Bill No. 84 (2013-2014 Reg. Sess.).....6

Calif. Sen. Bill No. 105 (2013-2014 Reg. Sess.).....6

CPOC, *Mandatory Supervision: The Benefits of
 Evidence Based Supervision Under Public
 Safety Realignment* (Winter 2012), available
 at [http://www.cpoc.org/assets/Realignment/
 issuebrief2.pdf](http://www.cpoc.org/assets/Realignment/issuebrief2.pdf).....9

Magnus Lofstrom and Steven Raphael, Public
 Policy Institute of California, *Impact of Rea-
 lignment on County Jail Populations 2* (June
 2013) 10, 11

TABLE OF AUTHORITIES – Continued

Page

LEGISLATIVE HISTORY

A.B. 109, 2011-2012 Leg., Reg. Sess. (Cal. 2011)2, 7

A.B. 117, 2011-2012 Leg., Reg. Sess. (Cal. 2011).....7

INTERESTS OF THE AMICI CURIAE¹

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The Chief Probation Officers of California is a non-profit organization representing the appointed chiefs in all 58 counties in the State of California. The mission of the Chief Probation Officers of California (CPOC) is to provide leadership in the mobilization, coordination, and implementation of probation programs and provide for public protection, including detention and treatment, victim services and the prevention of crime and delinquency; and to insure the provision of quality investigations and supervision of offenders for the courts.

¹ No counsel for a party authored this brief in whole or in part. No person or entity other than amici, its counsel or its members made any monetary contribution intended to fund the preparation or submission of this brief. Letters from the parties consenting to the filing of this brief have been filed with the Clerk of the Court. Counsel of record provided the required notice to the parties at least ten days before the filing deadline for this brief.

The matter before this Court stems from a finding in 2008 by a three-judge district court that in order for the California state prison system to meet Eighth Amendment requirements, the prisons could not be occupied beyond 137.5% of design capacity. This Court affirmed that conclusion, but also directed the three-judge panel to give “serious consideration” to modifying the order if “significant progress is made toward remedying the underlying constitutional violations.” *Brown v. Plata*, 131 S.Ct. 1910, 1947 (2011). CSAC and CPOC believe that “significant progress” has indeed been made, but has yet to be considered by the three-judge court. Instead, the court continues to order a reduction in the prison population to meet the 137.5% population cap, without any analysis of how conditions have changed as a result of historic reform in the State, or how the required prisoner releases would impact California’s counties.

Thus, CSAC and CPOC have a substantial interest in this case. Counties have been on the front line of implementing the State’s realignment of certain State prisoners and parolees to county custody and supervision (“Realignment”). A.B. 109, 2011-2012 Leg., Reg. Sess. (Cal. 2011). During the first year of Realignment alone, California’s 58 counties assumed responsibility for more than 50,000 persons realigned to the county criminal justice system, both offenders now sentenced to county jails and State inmates who now must be supervised by county probation officers. This number does not include offenders who are

serving detention time in county jail following parole revocation, as Realignment precludes them from being sent back to State prison. Nor does it capture likely several thousand more released or sentenced between October 1, 2012 and today – given that statewide data for this period is not yet available. This significant and unprecedented shift in responsibility from the State to counties greatly limits the counties' ability to absorb additional offenders into their systems.

California counties have been committed partners with the State in making Realignment successful. As required by the Realignment statutes, counties have established Community Corrections Partnerships to develop alternatives to incarceration and programs designed to reduce recidivism. CSAC and CPOC, along with other statewide criminal justice partners, have sponsored trainings to share best practices and effective programs among the counties in order to rise to the challenges of Realignment. These efforts, which are less than two years old, are designed to rehabilitate offenders and reduce the overall rate of incarceration in the State of California, which serves to increase public safety as well as the quality of life for the offenders and the population at large.

Despite this unprecedented shift of inmates from State prisons to county jurisdiction, the three-judge district court has refused to modify its order capping the population in California's prisons to 137.5% of design capacity. While the State continues its work

towards meeting the 137.5% target with minimal impact to public safety, there remains the risk that prisoners will be released in order to comply with the three-judge court's June 20, 2013 order. This uncertainty requires counties to prepare for the possibility of prisoner releases, which would have a significant and immediate impact on the success of the current Realignment endeavors. As such, CSAC and CPOC support the Appellants' request that this Court summarily reverse the order requiring releases pending a reevaluation of the record, or note probable jurisdiction and schedule the case for expedited plenary review. Such review of the progress that has already been made through Realignment is essential to avoid irreparable harm to the progress counties have made thus far in taking tens of thousands of offenders out of the State prison and parole systems and helping ease the State's overcrowded prison conditions. Denying jurisdiction would create uncertainty for the thoughtful system of reform currently in place.



SUMMARY OF THE ARGUMENTS

CSAC and CPOC respectfully request that this Court grant the relief requested by Appellants for the following reasons:

1. Counties have absorbed significant and unprecedented new responsibilities under Realignment. Realignment was adopted in response to this Court's prior order to reduce the State prison population.

Realignment has shifted State responsibilities to the counties, resulting in more inmates in our county jails, more offenders supervised by county probation, and more in-custody offenders being placed in county jails for violating the terms or conditions of post-release community supervision and parole. In addition, counties have developed, created, and expanded alternative incarceration programs and rehabilitation services designed to reduce the overall population incarcerated in this State. Realignment has resulted in profound changes for counties and has significantly impacted county capacity and functions, which limits the ability of counties to absorb additional prisoners into our communities. None of these programmatic changes were in effect when the three-judge court first determined that a reduction to 137.5% of capacity is required to meet constitutional standards. The significant improvements to California's system of providing prison medical care that have occurred during Realignment, as well as the public safety repercussions presented by releases post-Realignment warrant careful consideration to determine whether the court's order continues to meet the standards required by the Prison Litigation Reform Act. Thus, as this Court directed back in 2011, the three-judge court should evaluate whether the order remains appropriate in light of the changed conditions in the State.

2. Though the Governor and the Legislature continue their work on proposals to implement the three-judge court's order,² at the time this brief is being prepared there is no final legislative solution, nor has the three-judge court re-visited its order "requiring defendants to implement" the measures included in the State's court-compelled Plan submission. Pet. App. 1a (capitalization omitted); *id.* at 3a ("Defendants are ordered to implement all measures in the Amended Plan, commencing forthwith. . . ."), as well as "any additional measure or measures," *id.* at 51a; see *id.* at 3a. Thus, the order to release over 9,000 inmates before the end of the year remains in place at this time. Such a prisoner release presents a real and potentially dangerous challenge for counties, and puts at risk the successes that counties have already achieved in Realignment. California Department of Corrections and Rehabilitation Secretary Jeffrey Beard testified that, absent significant increases to capacity to house CDCR's inmates, the cap cannot be met without releasing serious and violent offenders. *Jurisdictional Statement*, p. 32. Although the characteristics of the specific inmates who would be released under the three-judge court's order may be unknown, what is known is that non-violent offenders sentenced after October 1, 2011 are already in county custody, and all eligible offenders released from State prison after October 1, 2011 are already

² See Calif. Sen. Bill No. 105 (2013-2014 Reg. Sess.); Calif. Assem. Bill No. 84 (2013-2014 Reg. Sess.).

being supervised by county probation. The counties are therefore justifiably concerned that those prisoners remaining in State prison who would be eligible for release under the June 20th order are more violent and serious offenders than those the counties have already been charged with supervising. The three-judge court's order presents a risk to community safety in all counties, and adds potentially unmanageable pressures on a system that is already difficult to manage under Realignment. Such an adverse impact on public safety cannot be sanctioned under the Prison Litigation Reform Act, 18 U.S.C. § 3626(a)(1)(A).



**REASONS WHY THE THREE-JUDGE
COURT'S ORDER IMPOSING ADDITIONAL
INJUNCTIVE RELIEF SHOULD BE STAYED
OR REVIEWED ON AN EXPEDITED BASIS**

I. PUBLIC SAFETY REALIGNMENT CREATED A PROFOUND SHIFT IN PRISONER MANAGEMENT IN CALIFORNIA, AND SHOULD BE CAREFULLY CONSIDERED BEFORE REQUIRING ADDITIONAL PRISONER RELEASES.

In response to this Court's prior order in this case, *Brown v. Plata*, 131 S.Ct. 1910 (2011), the State of California embarked on a monumental public safety realignment. See A.B. 109, 2011-2012 Leg., Reg. Sess. (Cal. 2011); A.B. 117, 2011-2012 Leg., Reg. Sess. (Cal. 2011). Among other changes to the State's

criminal justice system, Realignment created two new responsibilities for the counties to assume for the purpose of reducing the State's prison population.

First, the Realignment legislation changed sentencing requirements to mandate that certain felons be sentenced to serve time in county jails rather than State prisons. See Cal. Penal Code § 1170(h). In general, felony convictions that involved non-violent, non-sex, and non-serious offenses now require sentencing in county jail. Cal. Penal Code § 1170(h)(1)-(3). Further, parole and probation violators, who previously could be sentenced to State prison, are now required to be sentenced to county jails. Cal. Penal Code § 3056.

Second, counties became responsible (for the first time) to supervise certain adult offenders released from State prison through a program called Post-release Community Supervision (PRCS), rather than State parole. Cal. Penal Code §§ 3450, *et seq.* Effective October 1, 2011, PRCS supervision for offenders upon release from prison includes current non-violent offenders (irrespective of prior crimes), current non-serious offenders (irrespective of prior crimes), and some sex offenders. County probation departments have taken the responsibility to manage the PRCS populations as the supervising agencies. PRCS places many responsibilities on the counties to supervise offenders, including a process for dealing with those who violate conditions of their release. Further, beginning on July 1, 2013, parole revocations are no longer handled by the State Board of Parole

Hearings, but rather by the local courts, which will presumably accelerate revocations and return parole offenders to custody in county jails. Cal. Penal Code § 3000.08.

The shift in responsibilities over the realigned prison population has indeed been profound. Between October 1, 2011 and September 30, 2012, 36,329 state prison inmates have been released to county probation supervision rather than State parole, and 29,027 offenders have been sentenced to county jail instead of State prison terms. CPOC, *Mandatory Supervision: The Benefits of Evidence Based Supervision Under Public Safety Realignment* (Winter 2012), available at <http://www.cpoc.org/assets/Realignment/issuebrief2.pdf>. Further, these numbers do not include offenders who violated terms of supervision and are now required to serve additional time in county jail rather than State prison (for which data is not available). The rate of the transfer of responsibilities over offenders from the State to the counties continues as sentences are handed down daily, likely meaning that counties are responsible for several thousand more offenders released or sentenced in the last eight months.

Counties have made substantial progress in working together to address the requirements and impacts of Realignment, and have been largely successful to date. However, the impacts Realignment has had on county resources has been dramatic. A recent study conducted by the Public Policy Institute of California emphasizes the impact on county public safety resources:

Our data indicate that realignment has significantly affected county jail populations. Between June 2011 and June 2012, during which time California's prison population declined by roughly 26,600, the average daily population of California's jails grew by about 8,600 inmates, or about 12 percent. As a result, 16 counties are operating jails above rated capacity, up from 11 counties in the previous year. On a statewide basis, county jails have been operating above 100 percent of rated capacity since February 2012. In addition, we have observed an increase in the number of counties reporting early release of jail inmates due to insufficient capacity. By June 2012, 35 counties reported releasing pretrial inmates and/or sentenced offenders early due to capacity constraints (compared to 27 counties in June 2011).

Magnus Lofstrom and Steven Raphael, Public Policy Institute of California, *Impact of Realignment on County Jail Populations 2* (June 2013).

Yet, despite this rapid increase in county jail incarceration rates, the overall incarceration rates in the State decreased, which serves as evidence that the alternatives to incarceration and rehabilitation programs established by the counties under Realignment are working to reduce recidivism:

While realignment has certainly increased the population of county jails, the overall California incarceration rate (prisons and jails combined) has declined due to realignment.

That is to say, there has not been a statewide, one-to-one transfer of felons from state prison to county jails. We estimate that, on average, a county's jail population increases by one for every three felons no longer assigned to state prison.

Id. at p. 2.

Since Realignment is less than two years into its implementation, but shows early signs of success in reducing the State's prison population and overall incarceration rates, it is exceedingly important that counties be given additional time and resources to address any further prisoner release before it is implemented. The State, through its partnership with counties, has made significant strides in addressing the problems raised by this case and resulting orders. While the State is trying to develop alternatives to prisoner releases that would be acceptable to the three-judge court, the success of that effort is unknown at this time. In the meantime, the ordered release, which remains in place, should be carefully reviewed before irreparable harm threatens the successes counties have achieved to date.

II. RELEASE OF HIGHER RISK OFFENDERS JEOPARDIZES PUBLIC SAFETY AND BURDENS COUNTY RESOURCES, WHICH ARE DEDICATED TO SUCCESSFULLY IMPLEMENTING REALIGNMENT.

As explained above, beginning October 1, 2011, many categories of non-violent, non-sexual, non-serious

offenders have been sentenced to county jails rather than State prison. Similar offenders who have been imprisoned in State prison, as well as those whose commitment offense is non-violent, non-sexual, and non-serious, irrespective of prior criminal history, are being released to county supervision. The three-judge court's order does not specify which prisoners should be released to meet the injunctive relief granted. See, e.g., *Coleman v. Brown/Plata v. Brown*, ___ F.Supp.2d ___, Nos. 2:90-CV-520-LKK, C01-1351-THE, 2013 WL 3326873, at *22-24 (E.D.Cal., N.D. Cal. June 20, 2013). But as a practical matter, many, if not most, of the non-serious offenders have already been realigned out of the State prison system.

Those who remain, therefore, include the more serious offenders with a higher risk of recidivism and behaviors that are more difficult to treat with the programs that counties have designed through Re-alignment to deal with less violent offenders. The risk that releasing substantial numbers of such offenders poses to public safety is immediate and significant. For example, the three-judge court's order contemplates releasing those serving lengthy third-strike or life sentences to whom the Parole Board has denied parole precisely because the risk they pose to public safety makes them unfit for release. These considerations warrant this Court's review of the three-judge court's order for a careful evaluation of the profile of those prisoners who would be eligible for release, the impact to public safety of such release, and whether such release is justified under the Prison Litigation

Reform Act, 18 U.S.C. § 3626(a)(1)(A) [“The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by [prospective] relief.”].



CONCLUSION

The relief requested by Appellants is justified to prevent irreparable harm to public safety and to county administration of the criminal justice programs that are very much in their infancy under Realignment. Before this burden is placed on counties and our constituencies, Amici Curiae urge this Court to pause and closely evaluate whether this result, which in the new world of Realignment would uniquely impact counties, is absolutely required by the Prison Litigation Reform Act.

For the foregoing reasons, Amici Curiae support the Appellant's request for a stay or for this Court to accept jurisdiction of this case and review its merits on an expedited basis.

Dated: September 12, 2013

Respectfully Submitted,

ROGER H. GRANBO
Counsel of Record
Assistant County Counsel
648 Kenneth Hahn Hall
of Administration
500 West Temple Street
Los Angeles, CA 90012
Telephone: (213) 974-1609
rgranbo@counsel.lacounty.gov

Counsel for Amici Curiae

JENNIFER B. HENNING
Litigation Counsel
CALIFORNIA STATE ASSOCIATION
1100 K Street, Suite 101
Sacramento, CA 95814
Telephone: (916) 327-7535
jhenning@counties.org