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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARCIANO PLATA, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et
al.,

Defendants.

CASE NO.: CV 01-1351 TEH

BRIEF OF *AMICUS CURIAE*
Californians United for a
Responsible Budget
IN SUPPORT OF THE
PLAINTIFFS' MOTION TO
CONVENE A THREE JUDGE
PANEL TO LIMIT PRISON
POPULATION

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1 **TABLE OF AUTHORITIES**

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9 28 U.S.C. § 2284 (Prison Litigation Reform Act)

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Pursuant to Civil L.R. 7.11(c) of the Local Rules of the U.S. District Court for the Northern District of California, *Amicus Curiae* Californians United for a Responsible Budget respectfully request leave to file the attached Brief in Support of Plaintiff's Motion to Convene a Three Judge Panel to Limit Prison Population in this action.

INTEREST OF *AMICUS CURIAE*

Amicus Curiae Californians United for a Responsible Budget (CURB) is a broad-based, state-wide coalition of legal services and advocacy organizations, formerly incarcerated individuals and people who work with prisoners, faith-based groups, and others devoted to educating the public about the cause-effect relationships between prison policy and public safety, and seeking to curb prison spending by reducing the number of people in prison and the number of prisons in the state.

Amicus organizations include:

All of Us or None, an organization of people who have suffered felony convictions, which works to build unity and a program of action to effectively combat the many forms of discrimination faced by 30 million people living with felony convictions;

California Coalition for Women Prisoners, a grassroots racial justice organization that challenges the institutional violence imposed on women and communities of color by prisons and the criminal justice system;

1 *California Families for Inmates* is an advocacy organization that assists the
2 local Inmate Family Councils to become a cohesive, effective group through
3 education, exchange of information and research materials.
4

5 *California Prison Focus*, an organization working to stop human rights
6 violations, improve medical care and end long-term isolation in California prisons;
7

8 *The California Prison Moratorium Project*, based in California's Central
9 Valley, which seeks to stop all public and private prison construction in California
10 and use the money saved from California's prison construction budget to fund and
11 actively pursue alternatives to imprisonment;

12 *The Central California Environmental Justice Network*, a network of
13 environmental justice organizations from throughout California's Central Valley,
14 who have come together to try to find solutions to the ongoing pollution and
15 environmental injustices occurring in the mostly low income and communities of
16 color in the Valley's rural areas;
17

18 *Critical Resistance*, a national grassroots organization whose mission is to
19 end society's use of prisons as an answer to social problems;
20

21 *The Dolores Huerta Foundation*, whose mission is to build active
22 communities working for fair and equal access to resources in low-income
23 communities;
24

25 *Education Not Incarceration*, which consists of youth, educators, parents,
26 and concerned community members challenging the prison system and
27

1 reprioritizing our resources to create comprehensive and equitable education for
2 all people;

3 *Families to Amend California’s Three Strikes (FACTS)*, a statewide
4 organization whose mission is to strive for proportionality in sentencing and
5 fairness in the criminal justice system;

7 *Free Battered Women*, which seeks to end the re-victimization of
8 incarcerated survivors of domestic violence as part of the movement for racial
9 justice and the struggle to resist all forms of intimate partner violence against
10 women and transgender people;

12 *The Friends Committee on Legislation of California*, a long-running non-
13 profit action group working to bring compassion and social justice into
14 government by influencing law-making in the State Capitol;

16 *Justice Now*, which works with women prisoners and local communities to
17 build a safe, compassionate world without prisons;

18 *The Justice Policy Institute*, which promotes effective solutions to social
19 problems and is dedicated to ending society’s reliance on incarceration;

21 *Legal Services for Prisoners with Children*, a 30-year-old legal services
22 organization that advocates for the human rights of incarcerated parents and their
23 children and family members;

1 *Proyecto Common Touch*, which works to protect the due process rights of
2 women on parole or in custody of the California Department of Corrections
3 (CDC);

4
5 *Transgender, Gender-Variant and Intersex Justice Project*, whose mission
6 is to challenge and end the human rights abuses committed against transgender,
7 gender variant/genderqueer and intersex (TGI) people in California prisons and
8 beyond;

9
10 *The University of California Berkeley Graduate Assembly*, which is the
11 student government of UC Berkeley's graduate and professional school students;

12 *The Youth Justice Coalition* is working to build a youth-led movement to
13 challenge race, gender and class inequality in the Los Angeles County juvenile
14 justice system,

15
16 And,

17 *The Youth Law Center*, a public interest law firm that works to protect
18 children in the nation's foster care and juvenile justice systems from abuse and
19 neglect, and to ensure that they receive the necessary support and services to
20 become healthy and productive adults.

21
22 This case raises issues of extraordinary importance for the treatment of all
23 California prisoners. Its outcome is of importance not simply to plaintiffs, but to
24 all Californians who, like *amicus*, are concerned with how we as a society enact
25 justice; who are concerned with how the State treats those who are deprived of
26

1 liberty; and the effects of the prison system on the budget and public safety in
2 California.

3 The purpose of this brief is to give the Court a more complete
4 understanding of possible solutions to the current prison overcrowding crisis, and
5 the irrelevance of AB 900 to the real and urgent need to relieve overcrowding in
6 California's prisons. The brief also discusses several means of actually relieving
7 prison overcrowding that have been recommended to the state repeatedly, but have
8 never been implemented.
9

10
11 *Amicus* holds that AB 900 is not a real solution to immediately relieve the
12 overcrowding crisis in California's prisons, and the concerns of the plaintiffs and
13 the Court. If the Court finds that AB 900 is in fact a solution to overcrowding and
14 fails to appoint a three judge panel to limit the prison population, prisoners of the
15 state of California will continue to endure dangerous, inhumane and
16 constitutionally proscribed conditions for years into the future. In fact, by
17 requiring lengthy and expensive construction projects while failing to immediately
18 place a cap on the prison population, AB 900 allows overcrowding to continue and
19 worsen. *Amicus* urges the Court to reject the state's contention that AB 900 is a
20 meaningful attempt to address prison overcrowding, and to support plaintiffs in
21 their motion for an Order to Convene a Three Judge Panel to Limit Prison
22 Population in this action.
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1 Due to the extreme overcrowding in California’s prisons, *Amicus*
2 organizations believe that specific remedial orders cannot succeed unless and until
3 the prison population is limited. (Parallel motions to convene three-judge panels
4 have been filed with the Court in *Plata v. Schwarzenegger*, No. 01-cv-10351 TEH
5 and in the Eastern District in *Coleman v. Schwarzenegger*, No. Civ S 90-0520
6 LKK-JFM.) (now consolidated for this motion).)

8 INTRODUCTION

9
10 Despite defendants’ claims to have resolved this litigation through
11 compliance efforts, serious and systematic discrimination against the plaintiff class
12 persists. See Plaintiff’s Motion for Enforcement and Further Remedial Orders
13 (“Enforcement Motion”).

14
15 Defendants’ have not complied with the Americans with Disabilities Act
16 (“ADA”), Section 504 of the Rehabilitation Act, the Permanent Injunction, and the
17 Armstrong Remedial Plan due increasingly to the fact that there are too many
18 people in the California prison system. The circumstances have become so dire
19 that on October 4, 2006, Governor Schwarzenegger declared, “a State of
20 Emergency exists within the State of California’s prison system.” Prison
21 Overcrowding State of Emergency Proclamation (2006) (“Overcrowding
22 Proclamation”).

23
24
25 Plaintiffs have demonstrated systemic violations of their rights in the
26 Enforcement Motion. The executive and legislative branches of the California

1 government, including the Governor and other defendants in this case, given every
2 opportunity by the Court over many years to remedy this situation, have failed to
3 provide any realistic plan for addressing the needs of the state's prison population
4 in a reasonable time frame, even in the face of a constant flow of orders from
5 federal Courts. Given the failure of the state to act, the Court must now act to
6 limit population.

8 One immediately available remedy to address the overcrowding crisis is to
9 impose strict limits on the population of prisoners. Consequently, plaintiffs have
10 moved the Court to convene a three-judge panel, as required under 18 U.S.C. §
11 3626(a)(3), so that an order limiting prison population may be entered, and critical
12 relief may be obtained for the plaintiff class. Amicus supports this motion.

13 The Prison Litigation Reform Act (PLRA) requires judicial intervention in
14 the form of a "prisoner release order," whereby a three-judge panel orders the
15 reduction of a prison population in order to protect the Constitutional rights of
16 prisoners. 18 U.S.C. § 3626(a)(3). The PLRA defines a "prisoner release order" as
17 "any order, including a temporary restraining order or preliminary injunctive
18 relief, that has the purpose or effect of reducing or limiting the prison population,
19 or that directs the release from or nonadmission of prisoners to a prison." 18
20 U.S.C. § 3626(g)(4).

21 A prisoner release order is appropriate when: (1) a court has previously
22 entered an order for less intrusive relief that has failed to remedy the deprivation
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1 of the Federal right sought to be remedied through the prisoner release order; and
2 (2) the defendant has had a reasonable amount of time to comply with the previous
3 court orders. 18 U.S.C. § 3626(a)(3)(A). When these requirements are satisfied, a
4 court can order that the matter be referred to a three-judge panel, in accordance
5 with 28 U.S.C. § 2284, for consideration of whether a prisoner release order
6 should be entered. 18 U.S.C. § 3626(a)(3). In similar situations to that which
7 California now faces, the use of a three-judge panel for consideration of a prisoner
8 release order has been deemed the appropriate remedy under the PLRA. See, e.g.,
9 *Roberts v. County of Mahoning*, (D.Oh. 2006) (Case No. 4:03-cv-02329-DDD);
10 *Inmates of Occoquan v. Barry*, No. 86-2128(JLG).

11
12 In 1995, this Court held that “seriously mentally ill inmates in the
13 California Department of Corrections daily face an objectively intolerable risk of
14 harm as a result of the gross systemic deficiencies that obtain throughout the
15 Department,” *Coleman v. Wilson*, 912 F. Supp. 1282, 1316 (E.D. Ca. 1995). In
16 the twelve years since *Coleman*, the Court has tried numerous ways to effect relief
17 for the plaintiff class. However, the risk of harm has only grown in the face of
18 overcrowding.

19
20 California prisoners face horrific conditions that plainly violate Eighth
21 Amendment standards prohibiting the unnecessary and wanton infliction of pain,
22 yet neither the executive nor legislative branches of the state government has
23 produced a plan for prompt or meaningful remedy and as this brief argues, AB 900

1 does not constitute such a remedy. *Amicus* now asks this Court to act to safeguard
2 the lives of the more than 170,000 prisoners in the CDCR system.

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4
5 **I. PRISON EXPANSION IS NOT A SOLUTION TO OVERCROWDING.**

6 Shortly after entering office, Governor Arnold Schwarzenegger appointed
7 an expert commission to study and report overall findings on the state’s long
8 criticized Department of Corrections. That commission, headed by former
9 Governor George Deukmejian, issued over 200 recommendations, but chief
10 among them: “the key to reforming the system lies in reducing the numbers”.
11 Corrections Independent Review Panel, *Reforming California’s Youth and Adult*
12 *Correctional System* 123 (2004). Three years later, the legislature and the
13 Governor appear to have completely ignored this recommendation in enacting
14 AB900, which relies on construction of new prison beds as the purported solution
15 to the state’s crisis.

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17
18 Overcrowding in California’s prisons has not been driven by crime rates or
19 in relation to public safety. Studies establish that incarceration is not an effective
20 or sustainable way to reduce crime. *See, e.g.,* The Sentencing Project, *New*
21 *Incarceration Figures: 33 Consecutive Years of Growth* 1 (2006) (“despite falling
22 crime rates since 1991, the rate of incarceration in prison has increased by more
23 than 50% since that time...as a result of changes in sentencing policy and
24 practice...[such as] three strikes”); Justice Policy Institute, *Still Striking Out: Ten*

1 *Years of California's Three Strikes* 4, 27 (2004) (discussing the impact of Three
2 Strikes law on the size and scope of California's prison population, and
3 highlighting that "[t]here is no evidence of a crime reduction benefit, either
4 between counties or states, attendant upon the Three Strikes law"); Vera Institute
5 of Justice, *Reconsidering Incarceration: New Directions for Reducing Crime* 7
6 (2007) (concluding that "criminal justice policymakers appear to have placed
7 undue emphasis on incarceration" given that "the impact of incarceration on crime
8 is limited and diminishing").
9
10

11 Rather, as reported by the Little Hoover Commission, the current crisis is
12 largely the result of California's singular reliance on the CDCR. *Solving*
13 *California's Corrections Crisis: Time is Running Out* ii (2007) ("Corrections
14 Crisis"). The state has failed "to tap the resources of other agencies," such as those
15 providing education, job training, and housing opportunities, in order to truly
16 improve public safety. *See id.*
17

18 While the State has attempted to couch AB900 as a prison "reform"
19 package, building new prisons is not prison reform. History teaches us that
20 increasing the number of prison beds will only lead to more people in prison. In
21 1882 Folsom Prison was built in response partly to arguments that San Quentin
22 had become decrepit and overcrowded, only to become immediately overcrowded
23 itself. Since that time, California has undertaken expansion after expansion,
24 resulting in rising numbers of people in prison, increasingly poor conditions, and
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1 steady growth in the percentage of the overall state budget spent on prisons. (*See*
2 *for example*, Rudman, Cary J., and John Berthelsen. 1991. *An Analysis of the*
3 *California Department of Corrections' Planning Process: Strategies to Reduce*
4 *the Cost of Incarcerating State Prisoners*. Sacramento: California State
5 Assembly Office of Research.) Yet prison building has consistently failed to
6 alleviate overcrowding.

8 Most recently, the opening of Kern Valley State Prison at Delano II on June
9 1, 2005 exemplifies this phenomenon. In May 2005 there were 163,074 prisoners
10 in California's prisons. Delano II's new beds were immediately over-filled, and by
11 the end of the year there were 167,958 prisoners in California, an increase of 4,884
12 in 7 months. Two years later, the prison system is still at 200% design capacity,
13 with 172,971 prisoners as of May 31, 2007.

16 The Little Hoover Commission's most recent report on the prison system
17 suggests that the Governor and Legislature need to lay out plans that include
18 strategies and timetables for major milestones, and "should not settle for simply
19 building more cells." "Corrections Crisis" cover letter. The Commission stresses
20 alternatives such as sentencing and parole reform, successfully implemented in
21 over two dozen other states to reduce overcrowding. AB 900 sets no specific
22 timetable or milestones to show progress in relieving overcrowding, nor does it
23 call for alternative solutions which could actually reduce prison overcrowding
24 rapidly and economically.

II. AB 900 OFFERS NO SOLUTIONS TO THE OVERCROWDING CRISIS

AB 900 does not provide either long-term or immediate solutions to overcrowding. Instead, AB 900 is solely a prison expansion measure, calling on the state to build 53,000 new prison and jail beds over ten years, at a projected cost of \$15 billion for construction and debt service alone. The bill is yet another example of California's refusal to address the underlying causes of overcrowding.

AB 900 will have no immediate effect on prison overcrowding. The bill provides for bonds to fund future building of prisons, with a timeline laid out in years, rather than weeks or months. AB 900 does not contemplate the siting, funding, or construction of new prisons until at least 2014. This is seven years hence, and thus will not affect the thousands of prisoners who are currently living in unsafe conditions due to overcrowding. Measures aimed at actually relieving overcrowding, rather than expanding the system, must be taken immediately.

Other states faced with similar situations, including Montana, Colorado, Florida, Texas, Washington, have successfully and expeditiously relieved overcrowding by capping prison populations. Without a cap on prison population, combined with specific mechanisms for achieving this cap, the problem of overcrowding will continue during the lengthy time it takes for the state to attempt to fulfill AB 900.

1 It would be much more efficient and economical for California to dedicate its
2 resources to a plan addressing the causes of overcrowding than to continue
3 building prisons that will themselves soon be overcrowded. Unfortunately, while
4 the State misleadingly presents AB 900 as a prison reform bill that supports
5 rehabilitation and reentry programs, it does not provide for funding or staffing of
6 those programs. In fact, less than one percent of the monies requisitioned in AB
7 900 (\$50 million of the \$7.8 billion to be borrowed) are earmarked for unspecified
8 rehabilitation and reentry programs. This funding will not pay for extra staffing
9 and resources needed to make specific programs work on the scale required. Given
10 the overall bill and the funds devoted to it, the state is misleading the public in
11 presenting AB 900 as seriously creating workable rehabilitation and reentry
12 programs, and “reform.”

13 Unless the Court takes steps to cap the prison population now, and calls for a
14 meaningful plan to reduce the number of people in prison, even the projected new
15 capacity under AB 900 will be overflowing as soon as new beds become available.
16 The prison population will be at crisis levels no matter how many new beds are
17 built.

18 **III. THERE ARE IMMEDIATE AND LONG TERM SOLUTIONS** 19 **AVAILABLE TO END OVERCROWDING.**

20 The state is aware of various means to solve overcrowding, including
21 enacting sentencing reforms aimed at reducing population, enacting parole reform,
22 and creating and implementing effective programming, housing and job training

1 programs. AB 900 does not create any of these. A three-judge panel could order a
2 prison cap and mandate these programs.

3 The Little Hoover Commission’s “Corrections Crisis” report ends by
4 listing “Immediate Opportunities to Address Overcrowding,” including reducing
5 the number of people placed on parole, expanding earned early discharge of some
6 prisoners, and empowering judges to utilize truly community-based programs
7 instead of imprisonment. *Amicus* point to immediate solutions such as altering
8 California’s Three Strikes law, fully funding voter authorized Proposition 36
9 which provides for treatment rather than prison for some individuals convicted of
10 drug offenses, and streamlining early release of terminally ill and incapacitated
11 prisoners. The State could implement these specific changes immediately in order
12 to reduce overcrowding, rather than embarking on a lengthy and expensive prison
13 expansion program that will only *increase* the number of people in California’s
14 prisons.
15

16 **A. Parole Reforms**

17 Changing California’s parole policies is perhaps the most immediate and
18 meaningful mechanism to reduce the number of people in prison in the state.
19 Parole reform is long overdue as a remedy to overcrowding in California’s
20 prisons.
21

22 California has the highest rate in the nation of returns to prison for
23 violations of parole. We send upwards of 60,000 people to prison every year in
24

1 this state, not for new offenses, but solely for violations of parole. Little Hoover
2 Commission, *Back to the Community: Safe and Sound Parole Policies* 9 (2003).
3 This means that at any given time, people serving time for violations make up a
4 huge percentage of the prison population. The state could reduce the prison
5 population and relieve overcrowding by embarking on some common-sense parole
6 reforms.
7

8 For example, abolishing return-to-custody as a sanction for technical parole
9 violations could result in thousands fewer people being sent to prison every year.
10 Unlike other states, California currently places nearly every person who gets out
11 of prison on parole, and for longer periods of time, usually three years. We could
12 change policy to shorten lengths of parole and/or not place every person on parole.
13 We could also discharge people from parole earlier, such as discharging people
14 who serve twelve months of parole without a violation.
15

17 **B. Changing California's Sentencing Policies**

18 In the past three decades, California has passed harsh sentencing laws without
19 relation to increased public safety or funding for the consequences of longer
20 sentences on prison populations. Sentencing reform, such as reducing sentences,
21 providing alternative sentencing, or implementing a meaningful earned good-time
22 credit system would have an immediate effect on reducing the prison population.
23 For example, removing state prison as a sentencing option for driving under the
24 influence, drug possession or receiving stolen property would mean that thousands
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1 fewer people would be in prison. Unfortunately, AB 900 does not contemplate
2 any sentencing reform.

3 **C. Programming and Support**

4 Providing education and training programs and meeting basic housing and
5 treatment needs—in short, helping people coming home from prison—would
6 provide long term relief of prison overcrowding. Evidence in other states shows
7 that comprehensive and meaningful support is highly effective at reducing
8 recidivism. Currently, only a very small percentage of California’s prisoners are
9 able to access such services.
10
11

12 **CONCLUSION**

13 AB 900 is not a solution to the serious problems caused by overcrowding
14 addressed in the case at bar. The proposal to increase prison beds will only serve
15 to increase the number of people in prison, exacerbating the violations found by
16 this Court, rather than alleviating them. As the Deukmejian Commission
17 concluded, the “key to reform lies in reducing the numbers.” The State must take
18 immediate and comprehensive steps to reduce the prison population in California.
19
20 As a first step, *Amicus* urges the Court to grant Plaintiff’s motion for an Order to
21 Convene a Three Judge Panel to Limit Prison Population in this action.
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23 Dated: June 12, 2007

Respectfully submitted,

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27 Attorney for Amicus Curiae
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