No. 09-1233

IN THE

Supreme Court of the United States

GOVERNOR ARNOLD SCHWARZENEGGER, ET AL.,
Appellants,

—v.—

MARCIANO PLATA and RALPH COLEMAN, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURTS FOR THE EASTERN DISTRICT OF CALIFORNIA AND THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF *AMICI CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION, HUMAN RIGHTS WATCH, THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, AND PENAL REFORM INTERNATIONAL/THE AMERICAS

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INTEREST OF *AMICI*[1]

The interests of *amici* are set forth in an appendix to this brief.

INTRODUCTION

This case involves ongoing, undisputed, and lethal constitutional violations in the California state prison system. As the lower court found, and the State does not dispute, "the medical and mental health care available to inmates in the California prison system is woefully and constitutionally inadequate, and has been for more than a decade." JS1-App. 8a. Despite findings of Eighth Amendment violations in 2002 (medical care) and 1995 (mental health care), and the entry of dozens of remedial orders by the *Coleman* and *Plata* district courts, State officials have been unable or unwilling to bring their prison health care system into compliance with minimal constitutional standards.

The lower court also found, and the State again does not dispute, that "California's inmates face a second everyday threat to their health and safety: the unprecedented overcrowding of California's prisons." *Id.* at 9a. The State's prisons have for years operated at nearly double

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[1] The parties have lodged blanket consents to the filing of *amicus* briefs with the Clerk of the Court. Pursuant to Rule 37.6, counsel for *amici* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

their intended capacity, with some institutions approaching 300% of capacity. Governor Schwarzenegger, in declaring a prison emergency that continues to this day, observed that this creates "conditions of extreme peril" that threaten "the health and safety of the men and women who work inside [severely overcrowded] prisons and the inmates housed in them[.]" *Id.* The State's independent oversight agency has concluded that "California's correctional system is in a tailspin." *Id*. at 8a.

Faced with severe and ongoing constitutional violations, the *Coleman* and *Plata* district courts requested the convening of a three-judge court to consider whether a prisoner release order should be entered under the requirements set forth in the Prison Litigation Reform Act (PLRA). *See* 18 U.S.C. § 3626(a)(3)(D). The three-judge court conducted a lengthy trial and ultimately found by clear and convincing evidence that (1) crowding is the primary cause of the ongoing violation of plaintiffs' Eighth Amendment rights, and (2) no other relief will remedy those violations. *See* 18 U.S.C. § 3626(a)(3)(E). Accordingly, the lower court entered a prisoner release order, directing the State to reduce its prison population to 137.5% of the system's design capacity within two years.[2]

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[2] Under the PLRA, a "prisoner release order" includes "any order … that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison[.]" 18 U.S.C. § 3626(g)(4). Thus, while the lower court's order does not actually require the release of prisoners from the California

The State now appeals, contending that the lower court's order is barred by the PLRA. The State's arguments are, individually and collectively, without merit. Moreover, if accepted, they would render prisoner release orders unavailable, even when necessary to cure ongoing constitutional violations.

This case is unique in its intersection between severe and longstanding Eighth Amendment violations, and extreme and persistent crowding. Simply put, if a prisoner release order is not available on this record, it is an illusory remedy. The State's proffered interpretation of the PLRA cannot be squared with the statutory language or the legislative history; it would also raise serious constitutional questions and contravene the treaty and other international law obligations of the United States. For these reasons, this Court should decline the State's invitation; the order below should be affirmed.

SUMMARY OF ARGUMENT

Both the plain language and the legislative history of the PLRA make clear that Congress intended to preserve the availability of prisoner release orders when necessary to redress constitutional violations. The PLRA's prisoner release provisions were motivated primarily by cases in which population caps had been imposed in the absence of any finding of a constitutional

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prison system, it nevertheless qualifies as a "prisoner release order" under the statute.

violation. That concern has no application in this case, in which constitutional violations were found in 2002 and 1995 and persist today despite dozens of remedial orders.

The State's challenge to the three-judge court's jurisdiction based on allegedly erroneous findings by the single-judge district courts is not properly before this Court on direct appeal. The general rule is that this Court's direct appellate jurisdiction extends only to orders actually entered by three-judge courts, and no exception to that rule applies here. Any error underlying the single-judge courts' requests to convene a three-judge court did not affect that court's ruling on the merits, and it is that ruling that is properly before this Court.

Contrary to the State's contention, the three-judge court was not required to reconsider the constitutional violations found by the single-judge *Plata* and *Coleman* courts. Congress required a finding of "current and ongoing" violations in a different section of the PLRA, but not in the sections governing the entry of prospective relief in general or prisoner release orders in particular. Nor was the three-judge court barred by the PLRA from establishing a reasonable cut-off date for evidence it would admit at trial. Moreover, any error in this respect was harmless, since the State does not identify a single piece of evidence it contends was erroneously excluded by the three-judge court.

Finally, the State advances a highly restrictive construction of the PLRA which, if accepted, would render prisoner release orders

unavailable as a practical matter. A construction that would make such orders unavailable even when necessary to cure ongoing constitutional violations would raise serious constitutional questions, and therefore should be avoided if possible. Moreover, under international law, including treaties ratified by the United States, failure to provide prisoners with adequate medical and mental health care can constitute torture or cruel, inhuman or degrading treatment. Because states are required to make available effective legal remedies to victims of such treatment, a construction of the PLRA that makes prisoner release orders *de facto* unavailable would contravene these international law obligations. This Court should accordingly adopt a construction of the PLRA that does not raise these grave constitutional and international law concerns, and should affirm the order below.

ARGUMENT

I. CONGRESS INTENDED PRISONER RELEASE ORDERS TO REMAIN AVAILABLE UNDER THE PLRA.

It is beyond dispute that Congress intended prisoner release orders to remain available under the PLRA. This is plain from the language of the statute, which explicitly provides for prisoner release orders when necessary to redress ongoing constitutional violations. *See* 18 U.S.C. § 3626(a)(3). "We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v.*

Germain, 503 U.S. 249, 253-54 (1992). More to the point, when Congress explicitly authorizes a remedy, that remedy must not be construed so restrictively as to be illusory. *See Graham v. Bhd. of Locomotive Firemen and Enginemen*, 338 U.S. 232, 240 (1949) (holding that injunctive relief was available to enforce the right to nondiscriminatory treatment enacted in the Railway Labor Act; "there is nothing to suggest that, in enacting the subsequent Railway Labor Act provisions insuring petitioners' right to nondiscriminatory representation by their bargaining agent, Congress intended to hold out to them an illusory right for which it was denying them a remedy").

Moreover, the legislative history of the PLRA makes clear that Congress did not intend prisoner release orders to be unavailable in cases of longstanding and undisputed constitutional violations. "While prison caps must be the remedy of last resort, a court still retains the power to order this remedy despite its intrusive nature and harmful consequences to the public if, but only if, it is truly necessary to prevent an actual violation of a prisoner's federal rights." H.R. Rep. No. 104-21, at 25 (1995). The House Report explained that statutory restrictions on population caps were needed to "end the current practice of imposing prison caps when inmates in local prisons have complained about the prison conditions *but the presiding judge has made absolutely no finding of unconstitutionality or even held any trial on the allegations*." H.R. Rep. No. 104-21, at 25 (emphasis added). These concerns simply have no application in these

cases, in which Eighth Amendment violations were established in 1995 and 2002 and persist today despite dozens of remedial orders.

The legislative history shows that the prisoner release provisions of the PLRA were motivated in large part by Congressional reaction to the consent decree in *Harris v. Pernsley,* 654 F. Supp. 1042 (E.D. Pa. 1987), which imposed population caps in the Philadelphia prison system. *See* H.R. Rep. No. 104-21, at 9; 141 Cong. Rec. S14316 (Sept. 26, 1995) (Statement of Sen. Abraham); 141 Cong. Rec. S14414 (Sept. 27, 1995) (Statement of Sen. Dole). But the *Harris* decree bears little resemblance to the lower court order in this case.

First and most significantly, the *Harris* decree was entered by consent, and in the absence of any judicial finding of a constitutional violation. 654 F. Supp. at 1045. The *Harris* decree was also far more intrusive than the order at issue here: it banned the housing of more than two prisoners in a cell, as well as housing in "any gymnasium, corridor or bench area, or any area not set up for permanent housing;" it imposed numerical population caps, both for the system as a whole and for each individual facility; and it required both the release of current prisoners and the nonadmission of new prisoners under certain circumstances. *Id*. at 1046-47. By contrast, the lower court's order here follows repeated findings of constitutional violations; sets a systemwide population limit, expressed as a percentage of capacity, which the State is free to meet through out-of-state transfers, new prison construction, or

in any other way it chooses; and does not require the release or nonadmission of any prisoner.

The PLRA's prisoner release provisions were intended to put an end to *Harris*-like consent decrees, and they have effectively done so. There is no indication in the statutory text or legislative history that they were intended to bar the entry of the far less intrusive order at issue here, when necessary to redress ongoing and undisputed Eighth Amendment violations.

II. THE STATE'S CHALLENGE TO THE THREE-JUDGE COURT'S JURISDICTION BASED ON ALLEGEDLY ERRONEOUS FINDINGS BY THE SINGLE DISTRICT COURT JUDGES IS NOT PROPERLY BEFORE THIS COURT ON DIRECT APPEAL.

The State argues that the orders to convene the three-judge court in this case were premature, and that this Court should therefore vacate those orders and remand the case to the single-judge courts. This argument misconstrues the scope of this Court's direct review jurisdiction.

The general rule in three-judge court cases is that this Court's direct appellate jurisdiction extends only to "orders actually entered by three-judge courts." *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90, 96 n.14 (1974). The one narrow exception is that this Court may review an order convening a three-judge court to determine whether the three-judge court has

jurisdiction over the case,[3] but that jurisdictional review has been carefully confined to ensure that the exception does not swallow the rule. There are three lines of cases that address this exception.

In one line of cases, based on an earlier version of the three-judge court statute, this Court's review of the convening order focused on whether the challenged policy "ha[d] statewide application or effectuate[d] a statewide policy." *Bd. of Regents of the Univ. of Texas Sys. v. New Left Educ. Project*, 404 U.S. 541, 542 (1972). *See also, e.g.*, *Moody v. Flowers*, 387 U.S. 97, 104 (1967); *Rorick v. Bd. of Comm'rs*, 307 U.S. 208, 213 (1939); *Ex parte Pub. Nat'l Bank*, 278 U.S. 101, 104 (1928).[4] In conducting that review, however, the Court limited its inquiry to the face of the complaint and did not delve into factual disputes. For example, in *Moody v. Flowers*, the Court stated that its proper role was to "not accept the invitation to get into the niceties of the relationship between the provisions of the [county] charter and the New York County Law, but take the complaint as we find it for purposes of the jurisdictional question." 387 U.S. at 104. Similarly, in *Flast v. Cohen*, the Court relied

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[3] In *Gully v. Interstate Natural Gas Co.*, 292 U.S. 16, 18 (1934), the Court explained that it "necessarily has jurisdiction to determine whether the court below has acted within the authority conferred by [statute]."

[4] Under prior law, a three-judge court was required to enjoin the enforcement of a state statute on constitutional grounds. 28 U.S.C. § 2281, *repealed* by Pub.L. 94-381, 90 Stat. 1119 (1976). That is no longer the case.

solely on the allegations of the complaint to hold that the case would have statewide impact. 392 U.S. 83, 89-90 (1968).

In a second line of cases, this Court's review of the convening order has focused on whether the claim is so "insubstantial" that it cannot be heard by a three-judge court. *Bailey v. Patterson*, 369 U.S. 31, 33 (1962); *see also Ex Parte Poresky*, 290 U.S. 30, 32 (1933). In this context, "insubstantial" means that either the claim or all defenses to it are "legally speaking nonexistent" so that the issue presented "is essentially fictitious." *Bailey*, 369 U.S. at 33. Like statewide impact, the insubstantiality inquiry "must be determined by the allegations of the bill of complaint." *Poresky*, 290 U.S. at 32.

Finally, in a third line of cases, this Court has determined whether the cause of action falls within the language of a statute calling for a three-judge court. *See, e.g.*, *Allen v. State Bd. of Elections*, 393 U.S. 544, 560-63 (1969) (holding that three-judge court was properly convened because Congress intended suits under § 5 of the Voting Rights Act to be heard by three-judge courts); *Swift & Co. v. Wickham*, 382 U.S. 111, 128-29 (1965) (holding that three-judge court was improperly convened because 28 U.S.C. § 2281 does not call for a three-judge court to hear Supremacy Clause cases that involve only federal-state statutory conflicts).

In each of these three lines of cases, this Court's review of the convening order has been limited to examining the allegations of the complaint to identify whether the three-judge

court has jurisdiction to hear the case. Here, the three-judge court's jurisdiction derives from 18 U.S.C. § 3626(a)(3)(B), which states in relevant part: "In any civil action in Federal court with respect to prison conditions, a prisoner release order shall be entered only by a three-judge court . . ." Neither party has challenged the conclusion that the plaintiffs sought a prisoner release order, and therefore satisfied the jurisdictional prerequisite for a three-judge court.

The State's argument instead rests on a red herring. Specifically, the State contends that the district judges in *Coleman* and *Plata* erred in finding that the State had had a "reasonable amount of time to comply with the previous court orders," 18 U.S.C. § 3626(a)(3)(A)(ii), and therefore erred in requesting a three-judge court. That alleged error, the State contends, is reviewable by this Court on direct appeal. For the reasons set forth below, the State is wrong.

Even assuming *arguendo* that the single-judge courts erred, that error did not divest the three-judge court of jurisdiction because it neither changed the relief sought nor affected the merits of the three-judge court's later prisoner release order. *Hicks v. Miranda*, 422 U.S. 332 (1975), is instructive. In that case, the convening order failed to appoint the original district judge as a member of the three-judge panel, which violated 28 U.S.C. § 2284(b)(1). This Court held that the error was non-jurisdictional. 422 U.S. at 338 n.5. Like the composition of the three-judge panel, the question of whether the "reasonable time" requirement was met at the time the three-judge

panel was first convened has no impact on the merits of the prisoner release order that is now before the Court. That is because the three-judge court was required to find, and did find, that no relief other than a prisoner release order would remedy the violation of the prisoners' constitutional rights. 18 U.S.C. § 3626(a)(3)(E)(ii). This independent finding by the three-judge court was the "merits" ruling on this issue, not any previous "reasonable time" finding by the single district court judges.

Thus, review of the single-judge courts' "reasonable time" determination should be governed by the general rule that errors by the single-judge district court that do not go to the merits of the three-judge court's ruling are reviewed by the court of appeals, not this Court. *See, e.g., In re Slagle*, 504 U.S. 952 (1992) (White, J.) (opining that this Court lacks jurisdiction over a petition for mandamus to disqualify an individual member of a three-judge court); *Gonzalez*, 419 U.S. at 101 ("We hold, therefore, that . . . [for] a refusal to request the convention of a three-judge court ab initio, review of the denial is available only in the court of appeals"); *Hicks v. Pleasure House, Inc.*, 404 U.S. 1, 3 (1971) (holding that single district judge's issuance of a temporary restraining order after ordering the convening of a three-judge court is reviewable by the three-judge court or by the court of appeals, but not by the Supreme Court); *Mitchell v. Donovan*, 398 U.S. 427, 430-31 (1970) (holding that a three-judge court's order granting or denying only a declaratory judgment, without granting or denying injunctive relief, is not

directly appealable to this Court). "While issues short of the merits . . . are often of more than trivial consequence, that alone does not argue for [this Court's] reviewing them on direct appeal." *Gonzalez*, 419 U.S. at 99.

Moreover, whether the single-judge court gave the State a "reasonable amount of time" to comply with its orders is a fact-intensive question that is uniquely ill-suited to direct Supreme Court review. To decide this issue, the *Plata* and *Coleman* courts engaged in a detailed analysis that traced the progress of the cases and the State's remedial efforts over a twelve-year period, evaluated the role played by the Receiver, identified the relevant findings in the Receiver's reports, and considered the possible impact of recent legislative and executive action. JS1-App. 278a-285a; 289a-304a. This detailed factual inquiry relies heavily on the district courts' familiarity with the cases and the parties, and is wholly unlike the questions of law that define the three-judge court's jurisdiction. *Compare, e.g.*, *Moody*, 387 U.S. at 104 (relying solely on the allegations of the complaint to determine whether the three-judge court was properly convened); *Flast*, 392 U.S. at 89-90 (same); *Poresky*, 290 U.S. at 32 (same).

Vacating the convening order would also be inconsistent with the purposes of the three-judge court statute because it would pointlessly waste judicial resources. At this late stage, even if the single-judge courts convened the three-judge court more than a year too early, that error is

harmless.[5] Thus, vacating the convening order would likely result in an order to reconvene the three-judge court, another three-judge trial, and another direct appeal to this Court by the party that loses at the second trial. This would consume considerable judicial resources for no good reason. *See Gonzalez*, 419 U.S. at 98 (noting that Congress intended the three-judge-court statute to both "ensur[e] this Court's swift review of three-judge-court orders that grant injunctions" and "minimiz[e] the mandatory docket of this Court in the interests of sound judicial administration"); *Phillips v. United States*, 312 U.S. 246, 250 (1941) (noting that in enacting the three-judge-court statute, Congress was "mindful that the requirement of three judges . . . entails a serious drain upon the federal judicial system").

Finally, regardless of which court is the proper venue for reviewing the single-judge courts' adherence to 18 U.S.C. § 3626(a)(3)(D)'s procedural requirements, that review should give great deference to the single-judge courts' determination of reasonableness. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 403-04 (1990) (adopting an abuse-of-discretion standard for reviewing district court's reasonableness determination in Rule 11 proceedings). Whether the State was given "a reasonable amount of time" to comply with numerous court orders issued across more than a decade of litigation is exactly the kind of "multifarious and novel

[5] The State cannot seriously argue, nor has it argued, that it has not yet had a reasonable opportunity to remedy its constitutional violations.

question, little susceptible . . . of useful generalization" that lends itself to an abuse-of-discretion standard of review. *Pierce v. Underwood*, 487 U.S. 552, 562 (1988) (adopting an abuse-of-discretion standard for reviewing district court's determination that government's litigation position was not "substantially justified" for purposes of a fee award under Equal Access to Justice Act). The district courts' reasonableness determination was based on a careful and thorough review of the record; the State has not pointed to anything that would make it clearly erroneous. Accordingly, the convening orders should be left undisturbed, even if there is jurisdiction to review them.

III. APPELLANTS MISSTATE AND MISAPPREHEND THE ROLE OF THE THREE-JUDGE COURT UNDER THE PLRA.

A. The PLRA Does Not Require Three-Judge Courts To Reconsider The Constitutional Violations Previously Found By A Single Judge.

Under the PLRA, the responsibility for deciding whether prison conditions violate the Eighth Amendment is assigned to a single district judge. Here, the *Plata* and *Coleman* courts made two findings of unconstitutional conditions: one involving mental health care and one involving medical care. Consistent with the PLRA, the district judges then issued a series of remedial orders that, for years, proved inadequate to cure

the constitutional violations. If the State believed at any point that its prisons had achieved constitutional compliance, it was entitled under the PLRA to assert that position in a termination motion before the district court. It never did so.

Faced with this situation, the district judges who had supervised the litigation from the outset and were therefore intimately familiar with conditions in the California prison system as well as the State's history of noncompliance, requested a three-judge court to consider a prisoner release order as a last resort. In so doing, they followed the exact procedure set forth by Congress in the PLRA. Contrary to the State's assertion, the PLRA does not require the three-judge court to find that the previously adjudicated constitutional violations are "current and ongoing" as a predicate to issuing a release order. Rather, the PLRA specifically requires two different findings by the three-judge court: first, that "crowding is the primary cause of the violation of a Federal right," 18 U.S.C. § 3626(a)(3)(E)(i); and second, that "no other relief will remedy the violation of the Federal right," 18 U.S.C. § 3626(a)(3)(E)(ii).

The three-judge court in this case made both the required findings. Moreover, in making these findings, the three-judge court considered extensive evidence introduced by both sides regarding current conditions in the California prisons. The State does not cite *any* evidence

regarding current conditions that the three-judge court refused to consider. [6]

The State's contention that the three-judge court was additionally required to reconsider the underlying constitutional violations found by the *Coleman* and *Plata* district judges would, if adopted, seriously disrupt the PLRA's careful division of judicial responsibilities. Not surprisingly, it finds no support in the language or structure of the PLRA.

1. Congress knows how to mandate a specific finding of "current and ongoing" violations when it wants to do so. Indeed, Congress did precisely that in a provision of the PLRA that does *not* apply to the ruling of the three-judge court. In a prison conditions case, a defendant may make a motion to terminate prospective relief in a single-judge district court two years after issuance of the relevant injunction or consent decree, and every year thereafter. 18 U.S.C. § 3626(b)(1)(A). The motion to terminate must be granted unless the district court "makes written findings based on the record that prospective relief remains necessary to correct a *current and ongoing* violation of the Federal right." 18 U.S.C. § 3626(b)(3) (emphasis added); *see also Miller v. French*, 530 U.S. 327, 333 (2000).

By contrast, provisions of the same statute that address the initial entry of prospective relief in general, and prisoner release orders in

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[6] *Plata* Appellees' Br. at 36

particular, do not mention "current and ongoing" violations. Specifically, § 3626(a)(1)(A), which defines the requirements for initial entry of prospective relief, does not mention "current and ongoing" violations.[7] Nor does § 3626(a)(3), which prescribes requirements first to convene a three-judge court and then for such a court to enter a prisoner release order. 18 U.S.C. § 3626(a)(3).

"[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991) (quoting *Russello v. United States,* 464 U.S. 16, 23 (1983)). Congress' selective inclusion of the phrase "current and ongoing violation[s]" demonstrates that the PLRA did not require the three-judge court to make a finding of such violations separate from and in addition to its remedial findings.

2. If the State sought a separate finding regarding current and ongoing violations, the PLRA provided, as the three-judge court noted,

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[7] *See Thomas v. Bryant,* 614 F.3d 1288, 1320 (11th Cir. 2010) ("[T]he 'current and ongoing' requirement is distinct from the standard governing the initial entry of injunctive relief;" PLRA does not bar injunctive relief "to prevent a substantial risk of serious injury from ripening into actual harm"); *Austin v. Wilkinson* 372 F.3d 346, 360 (6th Cir. 2004) ("[T]he 'current and ongoing' language comes from § 3626(b)(3), governing the *termination* of relief, not from § 3626(a), governing requirements for initial relief.") (emphasis in original), *rev'd in part on other grounds*, 545 U.S. 209 (2005)).

the "proper means" for doing so – a motion to terminate prospective relief brought in the single-judge district courts under § 3626(b). JS1-App. 77a. The single-judge courts not only would have ruled on such a motion but would have done so "promptly," with prospective relief automatically stayed 30 (or at most 90) days after the motion was filed, and mandamus available to the State "to remedy any failure to issue a prompt ruling." 18 U.S.C. § 3626(e)(1), (2), and (3); *see also Miller*, 530 U.S. at 333.

The three-judge court invited the State to contest current violations in the single-judge district courts.[8] In *Coleman*, however, the State failed to bring a motion to terminate. And in *Plata*, the State brought such a motion but challenged only the legality of the receivership as a legal matter without disputing the existence of "present constitutional violations." *Plata v. Schwarzenegger*, 603 F.3d 1088, 1097 (9th Cir. 2010).

3. Having failed to contest current and ongoing violations through the proper mechanism, the State is left to argue that a motion to terminate would have required "a showing that *all* constitutional violations had been remedied," preventing the State from conceding the existence, but disputing the extent, of current violations. State Br. at 27. Not true. The single-judge courts could have granted a motion to terminate in part based on the scope of

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[8] *See Plata* Appellees' Mot. To Dismiss or Affirm at 29-30 n.3 (citing Pretrial Conf. Tr. 28-29 (Nov. 10, 2008)).

current violations – if only the State had brought the motion.[9]

B. The District Court Established A Reasonable Cutoff Date for New Evidence.

Facing a massive trial that would span fourteen court days, involve hundreds of exhibits, and include live testimony from almost 50 witnesses and written testimony from many more, JS1-App. 70a, the court set a cutoff date for new evidence roughly two and a half months before trial.[10] This, says the State, was reversible error. State Br. at 27-28. In truth, the court prevented unfair surprise and acted well within the bounds of its discretion in establishing the cutoff date.

1. Without a cutoff date for new evidence in prison conditions cases, counsel for prisoners would have no way to refute last-minute representations about changed circumstances. Plaintiffs' counsel could not review documents

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[9] *Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1206 (9th Cir. 2008) (stating that the extent to which prospective relief may be terminated depends on "the extent of the current and ongoing constitutional violations").

[10] The Court set an August 30, 2008 cutoff date, *Plata* D.E. 1294, at 3 ¶ 2.e, and trial commenced on November 18, 2008, JS-1 App. 70a. The state even presented evidence of conditions after August 30, 2008 at trial. Def. Ex. 1100; Tr. 1895:15-18; Tr. 800:8-10; Tr. 852:1-4; Tr. 860:2-10; Tr. 1914:10-12; Tr. 1894:11-14.

about new policies that prison officials claim to have implemented on the eve of trial, or visit prisons to observe supposedly new conditions. In large-scale trials about prison conditions, cutoff dates provide a commonplace mechanism to address the parties' asymmetrical access to current information about prisons owned and managed by the defendants. *See, e.g., Graves v. Arpaio*, 2008 WL 4699770, at *2, *3 (D. Ariz. 2008) (district court established an evidentiary cut-off date approximately two and a half months before commencement of hearing on defendants' motion to terminate relief under the PLRA).

In this case, the order that set the cutoff date prevented *both* plaintiffs and defendants from taking unfair advantage of new information. *Plata* D.E. 1294, at 3 ¶ 2.e. The order – at the State's request – barred plaintiffs' counsel from visiting prison facilities after the cutoff date. *Coleman* Appellees' Br. at 50. The order symmetrically prevented defendants from introducing evidence regarding conditions (other than legislative changes) that post-dated plaintiffs' last opportunity to visit the prisons. *Plata* D.E. 1294, at 3 ¶ 2.e. Defendants ultimately made a strategic choice not to challenge the order.

2. The establishment of a cutoff date shortly before trial fell within the proper discretion of the three-judge court and should not be disturbed on appeal. Appellate courts defer "to a district court's familiarity with the details of the case and its greater experience in evidentiary matters" and "afford broad discretion to a district

court's evidentiary rulings." *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008). This Court has emphasized a district court's discretion in prison cases to limit, or not to limit, evidence of changed conditions. *Farmer v. Brennan*, 511 U.S. 825, 846 (1994) (stating that, in establishing deliberate indifference in an action for injunctive relief, prisoners "may rely, *in the district court's discretion*, on developments that postdate the pleadings and pretrial motions, as the defendants may rely on such developments to establish that the inmate is not entitled to an injunction") (emphasis added).

The three-judge court properly exercised its discretion here. The larger a prison system and the more complex a trial, the earlier a cutoff date must fall to ensure that prison officials do not surprise plaintiffs with claims about dramatic changes that can be verified or refuted only by touring large and far-flung institutions, arranging similar visits for expert witnesses, and sifting through warehouses of documents. *Plata* and *Coleman* involved decades of litigation, an enormous record, and the largest state prison system in the United States. JS1-App. 56a, 70a. In these cases, measured as they must be in years and decades, the period between the cutoff date and trial was a tiny sliver of time.

IV. THE STATE'S ARGUMENTS, IF ACCEPTED, WOULD MAKE PRISONER RELEASE ORDERS UNAVAILABLE EVEN WHEN NECESSARY TO CURE ONGOING CONSTITUTIONAL VIOLATIONS.

"When conditions of confinement amount to cruel and unusual punishment, federal courts will discharge their duty to protect constitutional rights." *Rhodes v. Chapman*, 452 U.S. 337, 352 (1981) (quoting *Procunier v. Martinez*, 416 U.S. 396, 405-06 (1974)). Congress recognized that prisoner release orders will sometimes be necessary to cure ongoing constitutional violations, and therefore preserved their availability when enacting the PLRA.

The State advocates a construction of the PLRA in which judicial scrutiny of prisoner release orders is strict in theory but fatal in fact. The State's arguments, if accepted *in toto*, would render prisoner release orders unavailable as a practical matter. These arguments include:

1. Under the PLRA, a prisoner release order may not issue unless a court has previously entered an order for less intrusive relief and the defendant "has had a reasonable amount of time to comply with the previous orders." 18 U.S.C. § 3626(a)(3)(A). The State argues that, even if constitutional violations are longstanding and multiple remedial orders have failed to cure them, each additional order issued by the court starts the clock running anew, and bars the entry of a prisoner release order until some additional

indeterminate "reasonable amount of time" has elapsed. State Br. at 15-16.

2. The *Coleman* and *Plata* courts found ongoing constitutional violations, which the State did not contest. Nevertheless, the State argues that the three-judge court must allow constant relitigation of the constitutional violations, and may not establish a reasonable cut-off date for evidence it will hear at trial. State Br. at 26-30. In the State's view, the three-judge court is faced with an ever-moving target, in which evidence of constitutional violations can always be countered by last-minute representations by the State that, in light of the parties' asymmetrical access to the prisons, cannot effectively be challenged by plaintiffs.

3. The PLRA provides that a prisoner release order may not issue unless the three-judge court finds by clear and convincing evidence that "crowding is the primary cause" of the constitutional violation and that "no other relief" will remedy the violation. 18 U.S.C. § 3626(a)(3)(E). Confusing "necessary" with "sufficient," the State argues that this standard is not met unless eliminating crowding, without more, will entirely cure the constitutional violation. State Br. at 30, 33.

4. After taking extensive evidence, the three-judge court concluded that "California's prisoner population *must* be reduced to some level between 130% and 145% design capacity if the CDCR's medical and mental health services are

ever to attain constitutional compliance." JS1-App. 183a. The court ultimately ordered the State to reduce its prison population to 137.5% of design capacity within two years. The State now argues that this order violates the PLRA because there has been no showing that the Eighth Amendment specifically requires this precise level of population reduction, rather than some slightly different figure, such as 130% or 145% of capacity. State Br. at 42.

5. The PLRA requires that a court considering a prisoner relief order "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused" by the order. 18 U.S.C. § 3626(a)(1)(A). The three-judge court devoted fifty pages of its opinion to considering the public safety implications of its order. Nevertheless, the State argues that this requirement is not satisfied because the lower court did not credit *the State's opinion* that public safety would be compromised. State Br. at 54. The State thus argues in effect that defendants must have veto power over a court's issuance of a prisoner release order.

6. Finally, the State argues that the PLRA bars a prisoner release order that affects prisoners other than those who are members of the *Plata* and *Coleman* classes – even if such an order is necessary to cure the violation of those class members' Eighth Amendment rights. State Br. at 49-53.

Because it makes prisoner release orders unavailable as a practical matter, acceptance of

the State's construction of the PLRA would raise serious concerns under the Constitution as well as the treaty and other international law obligations of the United States.

A. A Construction of the PLRA Under Which Prisoner Release Orders are *De Facto* Unavailable Would Raise Serious Constitutional Questions.

"[W]here constitutional rights are at stake and where Congress leaves the federal courts with authority to grant only plainly inadequate relief, it has set itself against the Constitution." Lawrence G. Sager, *Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts*, 95 Harv. L. Rev. 17, 88 (1981). Were the PLRA interpreted to bar a prisoner release order even when necessary to cure an ongoing constitutional violation, serious constitutional questions would be raised.

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury v. Madison*, 5 U.S. 137, 163 (1803). Perhaps the most essential remedy is injunctive relief to halt an ongoing violation of constitutional rights. "[I]njunctive relief has long been recognized as the proper means for preventing entities from acting unconstitutionally." *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001); *see also Bell v. Hood*, 327 U.S. 678, 684 (1946) ("it is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights

safeguarded by the Constitution"). *See also Greenya v. George Washington Univ.*, 512 F.2d 556, 562 n.13 (D.C. Cir. 1975) ("If the Constitution creates a right, privilege, or immunity, it of necessity gives the proper party a claim for equitable relief if he can prevail on the merits").

This Court has held that a "'serious constitutional question' . . . would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim." *Webster v. Doe*, 486 U.S. 592, 603 (1988); *accord, Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 681 n.12 (1986) (noting with approval the view that "all agree that Congress cannot bar all remedies for enforcing federal constitutional rights"). In *Zehner v. Trigg*, 133 F.3d 459 (7th Cir. 1997), the Seventh Circuit considered the constitutionality of the PLRA's limits on damages for prisoners' "mental or emotional injury." *See* 42 U.S.C. § 1997e(e). The Court quoted with approval the district court's observation that "there is a point beyond which Congress may not restrict the availability of judicial remedies for the violations of constitutional rights without in essence taking away the rights themselves," but concluded that the continued availability of injunctive relief rendered the restriction on damages constitutional. 133 F.3d at 462-63. Here, by contrast, it is precisely injunctive relief that the State argues is unavailable to prisoners suffering ongoing Eighth Amendment violations.

"[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.,* 508 U.S. 602, 628-29 (1993). As demonstrated above, the better construction of the PLRA permits the order entered by the lower court and thus avoids these constitutional doubts.

B. Construing the PLRA to Render Prisoner Release Orders Unavailable Is Inconsistent With Treaty and Other International Law Obligations of the United States.

International law requires that states provide adequate medical care to prisoners including, where appropriate, mental health treatment. Failure to provide prisoners with such care violates both their right to human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment under international law, and gives rise to an obligation to provide an effective remedy. Consistent with well-settled principles of statutory construction, the PLRA should not be construed to bar a remedy required by international law.

1. International Law Requires that States Provide Adequate Medical and Mental Health Care to Prisoners.

Acknowledging the particular vulnerability of prisoners to abuse, international law affords them special measures of protection. The International Covenant on Civil and Political Rights, a treaty signed and ratified by the United States, requires that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." International Covenant on Civil and Political Rights ("ICCPR"), art. 10(1), Dec. 16, 1966, 6 I.L.M. 368, 999 U.N.T.S. 171. The United Nations Human Rights Committee, tasked with monitoring compliance with the ICCPR, has affirmed the "positive obligation" on states to protect the rights of those whose vulnerability arises from their status as persons deprived of their liberty. Human Rights Committee, General Comment No. 21, article 10, ¶3, U.N. Doc. HRI/GEN/1/Rev.1 at 33 (1994). In furtherance of this obligation, international and regional human rights laws and standards require that states provide prisoners with adequate medical services, including where appropriate mental health treatment.[11]

Three instruments developed by the United Nations set out international human rights

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[11] *Pinto v. Trinidad and Tobago*, Communication No. 232/1987, ¶ 12.7, U.N. Doc. CCPR/C/39/D/232/1987 (1990) (noting that Article 10(1) requires that governments provide "adequate medical care during detention.").

standards for the proper treatment of persons deprived of liberty, including their right to receive appropriate medical care, and provide guidance as to how governments may comply with their human rights treaty obligations. The Standard Minimum Rules for the Treatment of Prisoners state that prisons should provide medical services, including psychiatric services, "organized in close relationship to the general health administration of the community or nation" and that "[t]he medical services of an institution shall seek to detect and shall treat any physical or mental illness or defects which may hamper a prisoner's rehabilitation." Standard Minimum Rules for the Treatment of Prisoners ("SMR"), adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, U.N. ESCOR 24th Sess., Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (NO. 1) at 35, U.N. Doc. E/5988 (1977), Rules 22.1, 62.

Similarly, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that prisoners are to be given medical screening upon admission and provided appropriate medical care and treatment as necessary. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (no. 49) at 298, U.N. Doc. A/43/49 (1988), Principle 24 (stating "A proper medical examination shall be offered to a detained or imprisoned person as promptly as

possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary."). Finally, the Basic Principles for the Treatment of Prisoners provide that prisoners should receive a quality of health care comparable to that available in the outside community. Basic Principles for the Treatment of Prisoners, G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (no. 49A) at 200, U.N. Doc. A/45/49, Principle 9 (1990). While these instruments do not impose binding international obligations on the United States, they set forth detailed guidance on the content of treaty standards and customary international law.

The Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations "on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today,"[12] also provide detailed guidelines for the proper management and treatment of prisoners with mental disabilities. The SMR set out that psychiatric services should be available at each facility for any prisoner in need thereof,[13] and

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[12] SMR, Rule 1.

[13] *Id.*, Rule 22.1 ("At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality."); Rule 82.4 ("The medical or psychiatric service of the penal institutions shall provide for

that prisons be adequately staffed to provide psychiatric services.[14] They provide in addition that prisoners should be individually assessed for mental illness and thereafter categorized and treated in accordance with that assessment.[15]

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the psychiatric treatment of all other prisoners who are in need of such treatment.").

[14] *Id.*, Rule 49.1 ("So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.").

[15] *Id.*, Rules 22.1, 62. *See also*, International Criminal Tribunal for the former Yugoslavia, Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal, U.N. Doc. IT/38/REV.9 (Oct. 7, 2005), *available at* http://www.icty.org/x/file/Legal%20Library/Detention/IT38UNDU_rules_rev9_2005_en.pdf, Rule 34(B) ("The medical officer shall have the care of the physical and mental health of detainees and shall see, on a regular basis or as is necessary, all sick detainees, all who complain of illness, and any detainee to whom his attention is specifically directed."). Standards for the treatment of prisoners have also been developed regionally to mirror and expand upon those set by the SMR and other international instruments. *See* European Prison Rules, Council of Europe, Recommendation of the Committee of Ministers to member states, (Jan. 11, 2006), *available at* https://wcd.coe.int/ViewDoc.jsp?id=955747, Rule 40.3 ("Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation."); Rule 42.3 ("When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to: … (b) diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment … (e) identifying any psychological or other stress brought on by

2. A State's Failure To Provide Appropriate Medical and Mental Health Care to Prisoners Constitutes Torture or Cruel, Inhuman or Degrading Treatment.

International and regional human rights laws and standards also recognize that a failure on the part of the state to ensure that prisoners are afforded adequate and appropriate medical treatment can constitute cruel, inhuman or degrading treatment, and in certain situations, torture. Article 7 of the ICCPR states that no one "shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment." The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), a treaty signed and ratified by the United States, also prohibits such treatment. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85. Both the U.N. Human

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the fact of deprivation of liberty."); Rule 47.2 ("The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention."); Rule 81.3 ("Staff who are to work with specific groups of prisoners, such as foreign nationals, women, juveniles or mentally ill prisoners, etc., shall be given specific training for their specialised work."); and Rule 89.1 ("As far as possible, the staff shall include a sufficient number of specialists such as psychiatrists, psychologists, social and welfare workers, teachers and vocational, physical education and sports instructors.").

Rights Committee and the Committee against Torture, which monitors compliance with the CAT, have determined that a failure to provide adequate medical care to prisoners violates the prohibition on cruel, inhuman or degrading treatment and may amount to torture. *Raul Sendic Antonaccio v. Uruguay*, Communication No. R.14/63, U.N. Doc. Supp. No. 40 (A/37/40) at 114 (1982), para. 20; U.N. Committee against Torture, *Concluding Observations: New Zealand*, (1998) U.N. Doc. A/53/44, at para. 20 175.[16] Regional human rights courts, including the Inter-American Court of Human Rights and the European Court of Human Rights, have repeatedly held that the absence of or inadequate medical and mental health treatment for prisoners violates the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.[17]

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[16] *See also*, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Mr. P. Kooijmans, E/CN.4/1986/15, para. 119, 19 Feb. 1986, *available at*: http://ap.ohchr.org/documents/E/CHR/report/E-CN_4-1986-15.pdf. (noting that "prolonged denial of medical assistance" may constitute torture.).

[17] *See e.g., Garcia-Asto and Ramirez-Rojas v. Peru,* Inter-Am. Ct. H.R., (Ser. C.) No. 137, paras. 225-27 (Nov. 25, 2005) (holding that the lack of adequate medical assistance may constitute torture or cruel, inhuman, or degrading punishment or treatment.); *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, 2006 Inter-Am. Ct. H.R. (ser. C.) No. 150 paras. 101-104 (July 5, 2006) (finding violations of Article 5(1) of the American Convention (right to physical, mental and moral integrity) and 5(2) (right to be free from torture or cruel, inhuman, or degrading

These judicial decisions together with the international laws and standards upon which they are based demonstrate a growing international consensus that prisoners have a right to adequate medical treatment including, where appropriate, mental health services; and that the failure of the state to provide such treatment violates prisoners' human rights to dignity and to be free from torture and other cruel, inhuman or degrading treatment.

3. International Law Requires an Effective Remedy for Cruel, Inhuman, or Degrading Treatment, and the PLRA Should Not be Construed to Bar Such a Remedy.

When a state violates the prohibition on torture or other cruel, inhuman, or degrading treatment or punishment, international law requires that it provide those harmed with an adequate and effective remedy.[18] To implement

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punishment or treatment)); *Slawomir Musial v. Poland,* App. No. 28300/06, Eur. Ct. H.R. (2009), para. 86 (finding a violation of the right to be free from torture or cruel or inhuman treatment where the state failed to ensure that prisoners' "health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance."); *Melnik v. Ukraine*, App. No. 72286/01, Eur. Ct. H.R. 50 (2006) paras. 110-112 (finding the Article 3 prohibition of torture and inhuman or degrading treatment or punishment of the European Convention was violated where prisoners were not provided with adequate medical care).

[18] *See* Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948), art. 8 ("Everyone has the right to an

this internationally recognized right to a remedy, governments must open their legal systems to claims by victims of rights violations. "States must adopt appropriate and effective judicial and administrative procedures and other appropriate measures that provide fair, effective, and prompt access to justice" and "afford appropriate remedies to victims."[19]

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effective remedy by the competent national tribunals for acts violating . . . fundamental rights . . . ."); ICCPR, art. 2(3) (requiring that states provide "an effective remedy" including "judicial remedy" for victims of violations of the ICCPR and that states "ensure that the competent authorities shall enforce such remedies when granted."); CAT, art. 14(1) ("Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation . . . ."); *see also*, Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) ¶ 15 ("…States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights [protected by the ICCPR]").

[19] U.N. Commission on Human Rights, The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms, Final Report of the Special Rapporteur, M. Cherif Bassiouni, U.N. ESCOR, 56th Sess., at XX 2(b), 2(c), 3(d), U.N. Doc.E.CN.4/2000/62. *See generally* Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005) (discussing the internationally protected right to substantive and procedural remedies, including equal and effective access to justice).

The PLRA's limitations on remedies for prisoners raise serious concerns under these principles. Indeed, the Committee against Torture, in its most recent review of the United States, recognized that the PLRA's limitation on remedies for mental or emotional injury contravenes Art. 14 of the CAT (requiring redress for victims of torture) and called for its repeal.[20]

In this case, the lower court found that a prisoner release order is the only effective means of remedying ongoing deficiencies in medical and mental health care that violate the Eighth Amendment and therefore presumptively violate international law. *See Estelle v. Gamble*, 429 U.S. 97, 103 n. 8 (1976) (citing Rules 22-26 of the SMR as reflective of the "contemporary standards of decency" that guide Eighth Amendment analysis).[21] But the State argues for a construction of the PLRA that would bar a prisoner release order in this case and make such orders unavailable as a practical matter. Such a construction is inconsistent with the treaty and other international law obligations of the United

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[20] Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture, United States of America*, ¶29, CAT/C/USA/CO/2 (May 18, 2006), *available at* http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/e2d4f5b2dccc0a4cc12571ee00290ce0/$FILE/G0643225.pdf.

[21] *Cf. Graham v. Florida*, 130 S.Ct. 2011, 2033-34 (2010) (citing international law, including U.S. treaty obligations, as "support" for holding that juvenile life without parole for non-homicide offenses violates the Eighth Amendment).

States, and under well-established principles of statutory construction, is to be avoided if possible. *See Murray v. The Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804) ("It has also been observed that an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains..."). As explained above, the better construction is that the PLRA poses no obstacle to a prisoner release order in this case.[22]

[22] *The Charming Betsy* doctrine is a long-standing doctrine of statutory construction that this Court has affirmed in numerous decisions. *See, e.g.*, *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993); *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 178 n.35 (1993); *Lauritzen v. Larsen*, 345 U.S. 571, 578 (1953).

CONCLUSION

For the reasons set forth above, the order of the lower court should be affirmed.

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APPENDIX

INTEREST OF *AMICI*

The *American Civil Liberties Union* (ACLU) is a nationwide, non-profit, non-partisan organization with over 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. The *ACLU of Northern California, ACLU of Southern California,* and *ACLU of San Diego and Imperial Counties* are its California affiliates. Throughout its 90-year history, the ACLU has been deeply involved in protecting the rights of prisoners, and in 1972 created the National Prison Project to further this work. The ACLU has appeared before this Court in numerous cases involving the rights of prisoners, both as direct counsel and as *amicus curiae*.

Human Rights Watch is a non-profit, independent organization and the largest international human rights organization based in the United States. For over 30 years, Human Rights Watch has investigated and exposed human rights violations and challenged governments to protect the human rights of all persons, including prisoners. Human Rights Watch investigates allegations of human rights violations in the United States and over 80 countries throughout the world by interviewing victims and witnesses, gathering information from governmental and other sources, and issuing detailed reports. Where human rights violations have been found, Human Rights Watch advocates for the enforcement of those rights before government officials and in the court of public opinion.

The *Leadership Conference on Civil and Human Rights* is the nation's oldest and largest civil and human rights coalition, consisting of more than 200 national organizations. The mission of the Leadership Conference is to promote and protect the civil and human rights of all persons in the United States. Access to needed medical and mental health care is a fundamental civil and human right, but the horrific overcrowding in the California state prison system denies this right to one of the most vulnerable segments of society, prison inmates suffering from physical and mental illnesses, with tragic and often fatal consequences. In order to advance its mission, the Leadership Conference supports the authority of the federal courts to issue a prisoner release order as a remedy in extreme circumstances such as these, and has a vital interest in the outcome of this case.

Penal Reform International/The Americas is an affiliate of *Penal Reform International* (PRI), an international non-governmental organization working on penal and criminal justice reform worldwide, with programs in the Great Lakes region of Africa, the Middle East and North Africa, Central and Eastern Europe, Central Asia, the South Caucasus, and North America. PRI seeks to promote the development and implementation of international human rights norms in relation to law enforcement and prison conditions; a reduction in the use of imprisonment throughout the world; and the use of constructive non-custodial sanctions that support the social reintegration of offenders while taking into account the interests of victims.