

1 commencing on November 18, 2008, and reviewing dozens of trial declarations and expert
2 reports in addition to hundreds of exhibits, this court concluded that crowding was the
3 primary cause of the constitutional violations at issue in both cases and that no relief that did
4 not include a prisoner release order – defined broadly by the statute as any order having “the
5 purpose or effect of reducing or limiting the prison population, or that directs the release
6 from or nonadmission of prisoners to a prison,” 18 U.S.C. § 3626(g)(4) – could remedy those
7 violations. We further found, based on the evidence presented at trial, including reports
8 commissioned and proposals made by the state itself, that a prisoner population reduction
9 could be achieved without adversely impacting public safety or the operation of the criminal
10 justice system and that, in fact, California’s crowded prisons are criminogenic environments
11 that themselves have a substantial negative impact on public safety.

12 Rather than ordering any specific mechanisms for reducing California’s prison
13 population, we instead ordered defendants to present the court with a plan “that will in no
14 more than two years reduce the population of the CDCR’s adult institutions to 137.5% of
15 their combined design capacity.” Aug. 4, 2009 Opinion & Order at 183. We determined the
16 order to be narrowly tailored, to extend no further than necessary, and to be the least
17 intrusive means possible to correct the constitutional violations at issue. We also recognized
18 the importance of preserving the state’s discretion, as well as the limited role of the federal
19 courts. As we noted near the outset of our opinion, “[w]e recognize the gravity of the
20 population reduction order we issue herein, and we do not intervene in matters of prison
21 population lightly. Nonetheless, when federal court intervention becomes the only means by
22 which to enforce rights guaranteed by the Constitution, federal courts are obligated to act.”
23 *Id.* at 9.

24 Defendants now seek a stay of our order to develop a population reduction plan
25 pending their appeal of that interlocutory order to the United States Supreme Court. In our
26 opinion and order, we stated that we “will not grant any stay of the proceedings prior to the
27 issuance of the final population reduction plan, but will entertain motions to stay
28 implementation of that plan pending the resolution of any appeal to the Supreme Court.” *Id.*

1 at 183. In other words, we stated that we would entertain motions to stay our final order
2 once it was issued, to the effect that the state would not be required to put any population
3 reduction order into effect until after the Supreme Court had the opportunity to consider the
4 legality of that order; we also stated, however, that we would not stay any interim order
5 designed to require the state to help inform this court of its position and to allow the court to
6 develop a plan that would take into account the state's proposals. After carefully reviewing
7 the state defendants' written arguments, we do not find good cause to alter our decision.

8 As we have explained, our August 4, 2009 order requires simply the development of a
9 plan; it does not require implementation of any population reduction measures. The first step
10 towards the development of a plan is the state's submission of a proposed plan by
11 September 18, 2009. Plaintiffs and intervenors will then have until October 8, 2009, to file
12 any objections to the state's proposal, as well as to propose modifications to the state's
13 proposed plan or suggestions for additional actions. Defendants will then have until
14 October 23, 2009, to file a response to any submissions by the plaintiffs and intervenors.

15 We have set no fixed time limit for completing the process of developing a final
16 population reduction plan, although time is of the essence, and we may, after considering all
17 of the written submissions, find it necessary to obtain additional information from the parties
18 or intervenors, or to hold further hearings prior to approving a final plan. The state will be
19 required to take no action with respect to implementing any components of a population
20 reduction order until all of these proceedings are completed, and then, should it appeal, we
21 will entertain a motion to stay any action until the Supreme Court has reviewed the final
22 court-ordered plan.

23 In considering an application for stay, courts must consider:

24 (1) whether the stay applicant has made a strong showing that he
25 is likely to succeed on the merits; (2) whether the applicant will
26 be irreparably injured absent a stay; (3) whether issuance of the
stay will substantially injure the other parties interested in the
proceeding; and (4) where the public interest lies.

27 *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Applying these factors to this case, we first
28 find little, if any, likelihood that the state could prevail on its appeal from our interlocutory

1 order to provide a population reduction plan. To the extent that defendants would seek a stay
2 on the merits of an order to implement any such plan, no such order exists. Moreover, as we
3 have noted, in our August 4, 2009 order, we stated that once a final population reduction plan
4 has been issued, we will entertain motions to stay implementation of the plan pending
5 resolution of an appeal to the Supreme Court. Second, developing a plan to resolve the state-
6 acknowledged crisis in the prisons will not under any circumstances constitute irreparable
7 harm to the state, but will be of benefit to it in its efforts to bring to an end the
8 unconstitutional conditions in its prisons, as well as the detriments that flow therefrom – to
9 the state, its prisoners, the prison guards, and the public. Indeed, the state has already
10 completed much of the necessary work to develop a plan that could satisfy much or all of our
11 order, with the Governor’s population reduction proposals having been recently considered
12 and adopted (in full by one house and in part by the other) by the California Legislature.
13 Third, the balance of the equities is in favor of development of a plan rather than in delaying
14 such development for another year or more. Constitutional deprivations are now occurring
15 and are adversely affecting the health and mental health of many thousands of prisoners in
16 the California prison system. Plaintiffs have been seeking relief from these deprivations for
17 almost two decades, and, under the terms of our August 4, 2009 order, the state will have two
18 more years to resolve crowded prison conditions once a final plan is ordered by this court,
19 even aside from any delay resulting from a stay issued pending appeal on the merits and the
20 final resolution of the matter by the Supreme Court. No equitable purpose whatsoever could
21 be served by further delays in formulating a plan. Finally, the public interest lies in the
22 state’s making progress towards resolving its prison crisis, which includes the undisputed
23 crowding that led the Governor to declare a state of emergency in 2006 that remains in effect
24 to date. Development of a population reduction plan can only further this process and, thus,
25 the public interest.¹

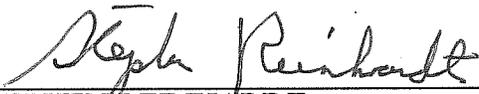
27 ¹Were we to apply the *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct.
28 365 (2008), test for the issuance of a preliminary injunction to the stay sought here, we
would reach precisely the same result with respect to each of the four factors.

1 This court has been more than patient with the state and its officials. Throughout the
2 proceedings, we have had considerable difficulty in determining their positions, in view of
3 their conflicting representations before this and other official bodies. We are persuaded that
4 it is now in the best interests of all concerned to act as swiftly as possible. Further delays and
5 obstruction will not well serve the people of the state, and will not be tolerated by this court.

6 For all of the above reasons, Defendants' motion to stay this court's August 4, 2009
7 order to develop a population reduction plan is DENIED.

8
9 **IT IS SO ORDERED.**

10
11 Dated: 09/03/09



STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

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15 Dated: 09/03/09



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

16
17
18
19 Dated: 09/03/09



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