

1 IN THE UNITED STATES DISTRICT COURTS
 2 FOR THE EASTERN DISTRICT OF CALIFORNIA
 3 AND THE NORTHERN DISTRICT OF CALIFORNIA
 4 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
 5 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE
 6

7 RALPH COLEMAN, et al.,
 8 Plaintiffs,

9 v.

10 EDMUND G. BROWN JR., et al.,
 11 Defendants.

NO. 2:90-cv-0520 LKK JFM P

THREE-JUDGE COURT

12
 13 MARCIANO PLATA, et al.,
 14 Plaintiffs,

15 v.

16 EDMUND G. BROWN JR., et al.,
 17 Defendants.

NO. C01-1351 TEH

THREE-JUDGE COURT

**ORDER REQUIRING LIST OF
 PROPOSED POPULATION
 REDUCTION MEASURES**

18
 19 Concurrently with the filing of this order, this Court denies defendants' Motion to
 20 Vacate or Modify Population Reduction Order (*Plata* ECF No. 2506/*Coleman* ECF No.
 21 4280). We reiterate that defendants must immediately take further steps to comply with this
 22 Court's June 30, 2011 Order, as amended on January 29, 2013 ("Order"), requiring
 23 defendants to reduce the overall prison population to 137.5% design capacity by
 24 December 31, 2013. To ensure that they do so, IT IS HEREBY ORDERED that:

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 26 1. Within 21 days of the date of this order, defendants shall submit a list ("List")
 27 of *all* prison population reduction measures identified or discussed as possible remedies in
 28 this Court's August 2009 Opinion & Order, in the concurrently filed Opinion & Order, or by

1 plaintiffs or defendants in the course of these proceedings (except for out-of-state prisoner
2 housing, discussed in 2(g)). Defendants shall also include on the List any additional
3 measures that they may presently be considering. Defendants shall list all of these measures
4 in the order that defendants would prefer to implement them, without regard to whether in
5 defendants' view they possess the requisite authority to do so. For each measure, defendants
6 shall include the following information:

7 a. Defendants' best estimate as to the extent to which the measure would,
8 in itself, assist defendants in reducing the prison population to 137.5% design capacity by
9 December 31, 2013, including defendants' best estimate as to the number of prisoners who
10 would be "released," *see* 18 U.S.C. § 3626(g)(4), as a result of the measure. If the measure
11 permits retroactive application, defendants shall include two sets of estimates – one
12 calculated on the basis of applying the measure prospectively only, and the other calculated
13 on the basis of applying the measure both prospectively and retrospectively.

14 b. Whether defendants, including Governor Edmund G. Brown Jr.,
15 currently possess the authority to implement the measure and, if not, what action or actions
16 must be taken by the Legislature or any administrative body or agency before defendants
17 may implement the measure and, if such action or actions have not yet been taken, which
18 specific constitutional provisions, statutes, regulations, or rules must be amended, modified,
19 or waived in order for defendants to be able to implement the measure.

20 c. If defendants must obtain further authorization to implement the
21 measure, the latest date by which that authorization must be obtained for the measure to have
22 a substantial effect on defendants' ability to comply with the Order.

23 d. A list of specific steps necessary to implement the measure, other than
24 those related to obtaining the necessary authorization, and the dates by which these specific
25 steps must be taken for the measure to have a substantial effect on defendants' ability to
26 comply with the Order.

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1 2. Within 21 days of the date of this order, defendants shall submit a plan
2 (“Plan”) for compliance with the Order. This Plan shall identify measures from the List that
3 defendants propose to implement, without regard to whether in defendants’ view they
4 possess the requisite authority to do so. The Plan shall include a number of additional
5 measures (contingency measures) should any of these measures prove infeasible or fail to
6 meet the anticipated numbers. Defendants shall also include the following information
7 regarding the Plan:

8 a. *For each measure in the Plan as to which defendants currently possess*
9 *the requisite authority:* the dates by which the specific steps to implement the measure will
10 be taken, and the person or persons responsible for taking each step.

11 b. *For each measure in the Plan as to which defendants currently lack the*
12 *requisite authority:* the necessary authorization, approval, or waivers, including listing the
13 specific constitutional provisions, statutes, regulations, or rules involved.

14 c. *For each measure in the Plan:* defendants’ best estimate as to the extent
15 to which the measure would assist defendants in reducing the prison population to 137.5%
16 design capacity by December 31, 2013, including defendants’ best estimate as to the number
17 of prisoners who would be “released” as a result of the measure.

18 d. *For the Plan as a whole but excluding contingency measures:*
19 defendants’ best estimate as to the total number of prisoners who would be “released” and
20 defendants’ best estimate as to the remaining prisoner population as a percentage of design
21 capacity. These estimates shall not double count prisoners who may fall within more than
22 one measure.

23 e. *For the measures included in the List but not in the Plan:* defendants’
24 reasons, excluding lack of authority, why they do not propose to implement these measures.
25 Other reasons that shall be excluded are all reasons that were previously offered at the trial
26 leading to this Court’s August 2009 Opinion & Order and rejected in that Opinion & Order.

27 f. An explanation of how the measures in the Plan would, individually and
28 collectively, provide a durable solution to the problem of prison overcrowding, such that the

1 prison population would be sustained at a level at or below 137.5% design capacity beyond
2 the December 31, 2013 deadline.

3 g. If defendants wish to include in the Plan a measure relating to slowing
4 or eliminating the return of inmates being housed in out-of-state prisons, they shall include
5 an estimate regarding the extent to which this measure would assist defendants in reducing
6 the prison population to 137.5% design capacity by December 31, 2013. They shall also
7 explain the effect on durability of failing to return the number of prisoners anticipated to be
8 returned in the Blueprint during the current year, and in particular whether those prisoners
9 and other out-of-state prisoners will be added to the prison population in future years.

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11 3. All defendants, including the Governor, shall use their best efforts to
12 implement the Plan.

13 a. *For each measure in the Plan as to which defendants currently possess*
14 *the requisite authority:* Defendants shall immediately commence taking the steps necessary
15 to implement the measure.

16 b. *For the remaining measures in the Plan:* Defendants shall forthwith
17 attempt in good faith to obtain the necessary authorization, approval, or waivers from the
18 Legislature or any relevant administrative body or agency.

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20 4. Following the filing of the List and the Plan, defendants shall include in their
21 monthly status reports the following information:

22 a. *For each measure in the Plan as to which defendants currently possess*
23 *the requisite authority:* the steps that have been taken towards such implementation. If any
24 step has not been taken by its intended date (as provided for in 2(a)), defendants shall explain
25 the reasons and list specific steps, including revised dates and persons responsible, such that
26 the measure will be implemented in time to have a substantial effect on defendants' ability to
27 comply with the Order. "Reasons" shall not include any explanation that challenges the
28 validity of this Court's orders or the necessity of defendants' compliance.

1 b. *For the remaining measures in the Plan:* all actions that have been taken
2 by defendants, including the Governor, to obtain the necessary authorization, approval, or
3 waivers from the Legislature or any relevant administrative body or agency, and the specific
4 actions taken by the Legislature or the administrative body or agency in response, if any.

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6 5. Two years ago, the Supreme Court stated: “The three-judge court, in its
7 discretion, may also consider whether it is appropriate to order the State to begin without
8 delay to develop a system to identify prisoners who are unlikely to reoffend or who might
9 otherwise be candidates for early release.” *Brown v. Plata*, 131 S. Ct. 1910, 1947 (2011).
10 We have inquired about defendants’ ability to develop such a system, and they have advised
11 us that they are able to do so. Defs.’ Resp. to Sept. 7, 2012 Order at 5 (*Plata* ECF No. 2479/
12 *Coleman* ECF No. 4243). Given the passage of time and defendants’ failure to take all steps
13 necessary to comply with our Order thus far, we now order defendant to develop a system to
14 identify prisoners who are unlikely to reoffend or who might otherwise be candidates for
15 early release, to the extent that they have not already done so. If defendants fail to reduce the
16 prison population to 137.5% design capacity in a timely manner, this system will permit
17 defendants to nevertheless comply with the Order through the release of low-risk prisoners.
18 Accordingly, defendants shall design the system such that it will be effective irrespective of
19 defendants’ partial or full implementation of some or all of the measures in the Plan. Within
20 100 days of the date of this order, defendants shall submit a report to this Court regarding the
21 actions taken thus far regarding this identification system, its current status as of that date,
22 and – if the system is not yet fully developed – defendants’ best estimate as to when it will be
23 fully developed.

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1 For the purposes of this order, the term “defendants” shall refer to each defendant,
2 individually and collectively.

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IT IS SO ORDERED.

Dated: 04/11/13 
STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

Dated: 04/11/13 
LAWRENCE K. KARLTON
SENIOR UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF CALIFORNIA

Dated: 04/11/13 
THELTON E. HENDERSON
SENIOR UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA