

No. 09-1233

IN THE
Supreme Court of the United States

ARNOLD SCHWARZENEGGER,

Governor of California, et al.,

Appellants,

v.

MARCIANO PLATA and RALPH COLEMAN, et al.,

Appellees.

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

**BRIEF FOR PRISON FELLOWSHIP, ALEPH
INSTITUTE, AMERICAN FRIENDS SERVICE
COMMITTEE, CALIFORNIA COUNCIL OF CHURCHES,
FRIENDS COMMITTEE ON LEGISLATION OF
CALIFORNIA, GENERAL SYNOD OF THE UNITED
CHURCH OF CHRIST, ISLAMIC SHURA COUNCIL OF
SOUTHERN CALIFORNIA, LEADERSHIP
CONFERENCE OF WOMEN RELIGIOUS, NATIONAL
ASSOCIATION OF EVANGELICALS, NATIONAL
COUNCIL OF CHURCHES, PAULIST NATIONAL
CATHOLIC EVANGELIZATION ASSOCIATION,
PROGRESSIVE JEWISH ALLIANCE, SOJOURNERS,
UNION FOR REFORM JUDAISM, AND UNITARIAN
UNIVERSALIST ASSOCIATION
AS AMICI CURIAE IN SUPPORT OF APPELLEES**

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INTERESTS OF AMICI CURIAE

Amici Curiae who submit this brief are religious organizations whose belief systems, while diverse, all emphasize the intrinsic value of every human being and the importance of a legal system that upholds constitutional principles even, or especially, when applied to those whose transgressions would otherwise make them easy targets for maltreatment.¹ Several Amici have active prison ministries that facilitate prayer groups, Bible studies, or group worship. Many have a concern with adequate health care generally and for inmates specifically.

Despite the subtle, or significant, differences among their beliefs or ministries, these Christian, Muslim, and Jewish Amici agree on two issues relevant to this appeal. First, they share a faith-based duty to ameliorate unnecessary human suffering, especially among the marginalized, such as the inmates in the California prison system. The inhumane conditions in the California prison system, caused primarily by overcrowding, lead to unnecessary deaths, including suicides, and a host of other unjustified and avoidable harms and affronts to human dignity.

1. Counsel for all parties have consented to the filing of this brief, and those consents have been filed with the Clerk of this Court. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than Amici Curiae, or their counsel, made a monetary contribution intended to fund its preparation or submission.

Second, Amici share an interest in eliminating the interference with religious freedom that extreme overcrowding causes. The overcrowding, and resultant lockdowns, deprive inmates of opportunities for congregate worship and study, which are central to the practice of the religions most prevalent in the California prisons and in the nation as a whole. Lockdowns also prevent access to the prisons for Amici to fulfill what some consider their religious duty to share their faith with those who are incarcerated. When religious practice is crowded out, inmates suffer and prisons become more difficult to manage. Further, the interruption of programs aimed at rehabilitation and redemption impedes inmates' eventual reintegration into society as law-abiding citizens.

Amici's interest in this appeal flows from their concern for the humane treatment of prisoners; their desire to attend to the spiritual needs of those who are marginalized, isolated, and even despised; and their commitment to protecting the free exercise of religion in general and in prisons in particular. Amici urge the Court to affirm the order of the Three-Judge Court so as to alleviate the overcrowding that is the primary cause of the prisoners' unnecessary suffering and death. An affirmance will also lift burdens on the prisoners' free exercise of religion, thereby helping to relieve their suffering; to increase safety inside the prisons for inmates, guards, and volunteers; and to further the societal interest in rehabilitation.

Amici include: Prison Fellowship, Aleph Institute, American Friends Service Committee, California Council of Churches, Friends Committee on Legislation of

California, General Synod of the United Church of Christ, Islamic Shura Council of Southern California, Leadership Conference of Women Religious, National Association of Evangelicals, National Council of Churches, Paulist National Catholic Evangelization Association, Progressive Jewish Alliance, Sojourners, Union of Reform Judaism, and Unitarian Universalist Association.²

SUMMARY OF ARGUMENT

Conditions in the California prisons fall far below both standards of human decency and constitutional proscriptions on cruel and unusual punishment. U.S. Const. amend. VIII; *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Estelle v. Gamble*, 429 U.S. 97, 102, 104–05 (1976). Sick prisoners get sicker. Inmates with mental illness are confined in cages while awaiting appropriate beds. The suicide rate is nearly twice the national average for prisons, and more than seventy percent of the suicides that occur are foreseeable and probably preventable. Preventable deaths occur as often as once every six or seven days. These affronts to prisoners' physical and mental health bear no relationship to any penological purpose. They are not meted out as punishment for any crime or infraction but instead fall with special force on those inmates who happen to be infirm or unwell. The Eighth Amendment protects prisoners from the arbitrary infliction of such serious harm. *Cf. Ewing v. California*, 538 U.S. 11, 20–23 (2003) (plurality opinion) (collecting cases).

2. Full statements of interest for Amici are set forth in the Appendix hereto.

Because these inhumane and unconstitutional conditions have persisted year after year and despite every previous attempt to correct them, Amici call for an immediate and effective remedy as authorized by the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626(a)(3). It has been fifteen years since the court held in *Coleman* that the California prison system's treatment of its inmates' mental illnesses violated the Constitution. Since 1995 the California prison system's mental health care has worsened. Eight years ago, California consented to judgment that its health care system for inmates violated the Constitution. Since 2002 the health care system in California prisons has deteriorated.

The PLRA authorizes a prisoner release order in these circumstances. As a precondition to such an order, the PLRA requires that a prior court order mandating less intrusive relief has failed. 18 U.S.C. § 3626(a)(3)(A)(i). In *Coleman* more than seventy orders have issued, but the confinement in cages and the foreseeable and preventable suicides continue. Despite the many orders issued in *Plata*, the extreme departures from the standard of care and unnecessary deaths continue. The PLRA requires that the defendant have a reasonable amount of time to remedy the violations. 18 U.S.C. § 3626(a)(3)(A)(ii). California has had eight years in *Plata* and fifteen years in *Coleman* to remedy the violations. It has not done so. The PLRA requires the court to find that overcrowding is the primary cause of the violation and that no other form of relief will remedy the violation. 18 U.S.C. § 3626(a)(3)(E)(i)-(ii). The Three-Judge Court so found, and its findings are overwhelmingly supported in the record. If this Court holds that a prisoner release

order is not called for in this case, it is painful to imagine circumstances egregious enough, or prolonged enough, to justify such an order. In these circumstances, the federal courts must have the power to remedy entrenched constitutional violations and thereby stop the unjustified and avoidable suffering.

An additional consequence of the extreme overcrowding in the California prison system is its detrimental effect on religious practices. Congress has specifically protected inmates' rights to religious exercise under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc to 2000cc-5. For many prisoners, the path from wrongdoing to rehabilitation runs through faith and religious practice. They depend on volunteers, like those associated with several Amici, who lead them in worship; study the Bible, Qur'an, or other sacred texts with them; and help them to develop the moral compass they need to guide them to a safe, productive, and responsible life, both within the institution and after their release. The freedom to practice their faith can be critical to restoring inmates' sense of hope and purpose while also bringing greater order to the prisons and more security to our communities. It is for these reasons that many Amici consider prison ministry to be a fundamental element of their religious mission and of the practice of their own faiths.

And yet the overcrowded conditions and excessive use of lockdowns in California prisons choke off meaningful opportunities for religious worship and observance. When every available square foot is used for triple-bunking, there is simply no room for religious,

educational, or other rehabilitative programming. Lockdowns also prevent religious volunteers from entering the prisons, thereby shutting out the guidance, solace, compassion, and rehabilitative influence they bring. Overcrowding in the California prisons has thus stifled inmates' religious exercise, in addition to depriving them of constitutionally sufficient health care. As the violations multiply, the moral and legal imperative to remedy the overcrowding intensifies. Congress authorized prisoner release orders in the PLRA for just such cases as this, so that federal courts can adopt a meaningful remedy when all other attempts to end the unconstitutional conditions and attendant suffering have failed.

ARGUMENT

I. The Unconscionable Conditions in the California Prison System Regarding Medical and Mental Health Care Violate Both Constitutional and Humane Standards and Must Be Remedied.

California has failed for decades to provide constitutionally adequate medical and mental health care to its inmates, resulting in the unnecessary and wanton infliction of pain. Inmates in need of significant mental health treatment are confined in "dry cells" – a euphemism for cages – because beds are not available. California has a shameful record of dealing with foreseeable and preventable suicides. Inmates who become seriously ill die for lack of proper treatment, as of mid-2005 at the rate of more than one per week.

The Constitution requires that California "provide humane conditions of confinement." *Farmer*, 511 U.S.

at 832. This mandate includes an obligation to provide medical care for its inmates. *Estelle*, 429 U.S. at 103. For more than thirty years, this Court has recognized that a prison system’s failure to provide for inmates’ medical care results in pain and suffering, leading in the worst cases to a “lingering death.” *Id.* (quoting *In re Kemmler*, 136 U.S. 436, 447 (1890)).

As this Court stated in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 199–200 (1989):

[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. . . . The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs – *e.g.*, food, clothing, shelter, medical care, and reasonable safety – it transgresses the substantive limits on state action set by the Eighth Amendment

For too long, California’s prisons have failed to provide for the “basic human needs” of the inmates in their charge.

The harms that befall prisoners are not part of any assessed punishment. No inmate is sentenced to the

deprivation of necessary medication or the denial of treatment for pain or disease – nor could they be. Rather, this arbitrary infliction of injury is the result of a system so overwhelmed by the population influx that it cannot deliver constitutional care.

The Three-Judge Court correctly concluded that overcrowding is the primary cause of the unnecessary pain and suffering. A prisoner release order may not be enough to cure all the constitutional violations in the California prisons, but without such an order, those violations will surely persist. When no other remedy has led or can lead to constitutional compliance, the PLRA permits a prisoner release order. Inmates in California have waited too long for the decent treatment to which they are entitled both because they are human beings and because they retain certain fundamental constitutional rights.

A. The Three-Judge Court Correctly Concluded That Mental and Medical Health Care in the California Prison System Falls Below the Constitutional Minimum.

In the course of ruling on the remedial question of whether a prisoner release order is justified under the PLRA, *see* JS1-App. 76a–78a,³ the Three-Judge Court

3. When citing documents found in the State’s Appendix to the Jurisdictional Statement in its first Supreme Court Appeal (09-416), Amici use the citation form “JS1-App. __.” Plaintiffs’ and Defendants’ trial exhibits are cited by party and number (“P-__” and “D-__”). Trial records in *Coleman*, No. CIV-S-90-0520-LKK (E.D. Cal.), are cited by docket entry (“*Coleman*-D.E. __”). Trial testimony before the Three-Judge Court is cited as “Tr.”

identified the facts that establish the constitutional violation and make the remedy a matter of utmost urgency. Amici highlight some of the facts that reflect intolerable departures from both constitutional norms and basic standards of human decency. All findings by the Three-Judge Court are entitled to deference and can be overturned only if clearly erroneous.⁴

As to mental health, the Three-Judge Court found that seriously mentally ill inmates “languish in horrific conditions without access to necessary mental health care,” and these conditions increase “the acuity of mental illness throughout the system” and “the risk of inmate suicide.” *Id.* at 9a. Crowding creates a severe bed shortage at every level of the mental health care system, causing inmates to be placed in inappropriate settings. *Id.* at 97a. Among the inappropriate settings are “temporary housing alternatives” – in plain language, “telephone-booth-sized interview stalls typically placed in corridors.” *Id.* at 98a (quoting D-1292 at 3 (Special Master’s Resp., May 31, 2007)). Also known

4. Federal Rule of Civil Procedure 52(a)(6) states: “Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court’s opportunity to judge the witnesses’ credibility.” This clearly erroneous standard does not allow an appellate court to reverse factual findings simply because the appellate court would have decided the case differently. Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous. *United States v. Yellow Cab Co.*, 338 U.S. 338, 342 (1949). “This is so even when the district court’s findings do not rest on credibility determinations, but are based on physical or documentary evidence or inferences from other facts.” *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985).

as “dry cells,” these structures are in fact cages. *Id.* at 98a–99a (citing *Coleman-D.E.* 3201 ¶ 156 (Prof. Craig Haney, Rep., Aug. 15, 2008)). See image below.



Image from *Coleman-D.E.* 3221 App. C (Pablo Stewart, M.D., Supp. Rep., Aug. 15, 2008). These cages have no toilets, sinks, or beds. *Coleman-D.E.* 3201 ¶ 106; *Coleman-D.E.* 3217 ¶ 141 (Pablo Stewart, M.D., Rep., Nov. 9, 2007). Suicidal inmates are confined in these cages for days, waiting for treatment beds. While waiting, they are shuttled at night to “wet cells,” which have toilets and beds for sleeping, before transfer back

to the cages the next day. JS1-App. 98a–99a. The most seriously mentally ill wait for up to a year to be transferred to inpatient beds. *Id.* at 98a (citing *Coleman-D.E.* 3221 ¶ 20).

The Three-Judge Court found that the California prison system has an elevated rate of suicides as compared to the national prison average. JS1-App. 123a (citing P-58 at 9 (Raymond F. Patterson, M.D., Rep. on Suicides Completed in the CDCR (California Department of Corrections and Rehabilitation) in 2006, filed Sept. 12, 2008)). The evidence shows that in 2006, the California prison system suicide rate of 25.1 per 100,000 inmates was almost 80% higher than the national average of 14 per 100,000. *Id.* at 123a (citing P-58 at 9). And, significantly, 72.1% of those suicides were foreseeable and probably preventable. JS1-App. 124a. In the first ten months of 2008, directly before the start of the November 2008 trial, the suicide rate remained high, at 24 suicides per 100,000 inmates per year. *Id.* at 124a n.53.

The record on general medical care is equally appalling. The Three-Judge Court found that 40% of “unexpected” deaths (excluding suicides and homicides) were preventable or possibly preventable. *Id.* at 124a–125a (citing D-1233 at 8 (Kent Imai, M.D., Analysis of Year 2007 Death Reviews, Nov. 3, 2008)). Sixty percent involved “extreme departures” from the standard of care. *Id.* at 125a.

Like mentally ill inmates, those with physical infirmities are forced to wait too long for medically necessary treatment. *Id.* at 9a. At one facility, only 0.6%

of inmates with “urgent referrals” are seen by medical providers within the fourteen-day period prescribed by CDCR policy. *Id.* at 115a (citing *Coleman-D.E. 3231-14* ¶ 65 (Ronald M. Shansky, M.D., Rep., Nov. 9, 2007)). These delays can and do cause death. Typical situations include a death caused by a two-year delay in diagnosis of testicular cancer in an inmate with chronic testicular pain, a death from failure to treat an inmate who presented nine times over three days with severe abdominal pain, and death from the failure of the on-call physician to come for over eight hours to attend to an inmate with constant and extreme chest pain. P-34 at 6 (Kent Imai, Analysis of CDCR Death Reviews, Aug. 20, 2007).

The record thus establishes that for many years, up to and including the months before the trial in the Three-Judge Court, conditions in the California prison system not only fell below minimum constitutional standards but also inflicted on the inmates severe and unnecessary pain and suffering. *See, e.g., Coleman-D.E. 3221* (describing conditions as of July and August, 2008); *Coleman-D.E. 3231-15* (Jeanne Woodford, Supp. Rep., Aug. 15, 2008) (same); *Coleman-D.E. 3231-9* (Doyle Wayne Scott, Supp. Rep., Aug. 13, 2008) (describing conditions as of June 2008).

This Court has held that the Eighth Amendment prohibits the imposition of punishments that are grossly out of proportion to the crime. *See Ewing v. California*, 538 U.S. 11, 20–23 (2003) (plurality opinion) (reviewing history of proportionality principle in case law). Amici endorse society’s need to impose fitting punishments for criminal behavior. Those who conduct prison

ministries help inmates to accept responsibility for their crimes and to seek forgiveness. But California's conditions of confinement are not rationally related to criminal behavior and just punishment. No court or legislature has determined that any inmate deserves to endure repeated cycles of psychosis or untreated infection in penance for his crime. Such suffering is meted out by chance to those inmates unfortunate enough to get sick or need mental health care in a California prison.

There is no societal justification for such arbitrary and cruel conditions of confinement. As set forth below, the record is clear that overcrowding is the primary cause for these inhumane conditions and, unless overcrowding is reduced, the infliction of unnecessary pain and suffering will continue. Without a prisoner release order, California's prisoners can have no hope of a real end to their already prolonged and inexcusable suffering.

B. The Three-Judge Court Correctly Concluded That the PLRA Authorizes a Prisoner Release Order To Remedy Longstanding and Intractable Violations That Result Primarily from Overcrowding.

In enacting the PLRA, Congress did not intend to make prisoner lawsuits impossible or to cut off vital remedies, because “[o]ur legal system . . . remains committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law.” *Jones v. Bock*, 549 U.S. 199, 202 (2007). Most pertinent here, Congress did not ban prisoner release

orders. Instead, it set forth the terms under which courts may issue such orders, setting the bar high to make this a remedy of last resort. California attempts, however, to raise the bar beyond what Congress intended or what any litigant may vault. This attempt to vitiate the final remedy authorized by the PLRA cannot succeed.

The PLRA establishes four requirements for the issuance of a prisoner release order: (1) a prior order for less intrusive relief has failed; (2) the defendant has had sufficient time to remedy the violation; (3) “crowding is the primary cause of the violation;” and (4) “no other relief will remedy the violation.” 18 U.S.C. § 3626(a)(3)(A)(i)–(ii), (a)(3)(E)(i)–(ii). The Three-Judge Court properly held that all four requirements are met here.⁵

1. Prior orders for less intrusive relief have failed.

Numerous prior orders for less intrusive relief issued by the *Coleman* and *Plata* Courts have failed. The Three-Judge Court found that, during nearly two decades of litigation, the *Coleman* Court had issued more than seventy orders. JS1-App. 31a. Yet California

5. These first two prerequisites for a prisoner release order are also the preconditions for convening a three-judge court with the authority to issue such an order. 18 U.S.C. § 3626(a)(3)(C), (D). Amici adopt the position of the Plaintiffs-Appellees that the decision to convene a three-judge court is not reviewable in this Court. *See Coleman* Appellees’ Br. 35-39. Amici nevertheless address the first two PLRA requirements insofar as they relate to the justification for the prisoner release order issued below.

“still cannot provide thousands of mentally ill inmates with constitutionally adequate mental health care.” *Id.*

The Three-Judge Court also found that, despite a stipulation for injunctive relief, the appointment of a Receiver, and numerous orders, *not a single prison has successfully completed implementation of the stipulated remedy in Plata.* *Id.* at 15a–17a. This was true as of May 2005, when twelve prisons were supposed to have come into compliance under the stipulated implementation schedule, and the Three-Judge Court found that “[it] remains true now, more than seven years after the court approved the parties’ settlement agreement.” *Id.* at 17a.

In sum, “[a]ll of the steps defendants have taken under the *Plata* court’s supervision, as well as the steps taken under the *Coleman* court’s supervision, have failed to remedy the constitutional deficiencies.” *Id.* at 141a.

2. California has had sufficient time to remedy the violations.

California has had years and years to remedy the violations while inmates continue to decline and die. Fifteen years to develop adequate mental health care is too long. Eight years is too long to bring even one of California’s prisons into compliance with the remedy that California stipulated to implement. The *Plata* Receiver advised the court that “[California] had ample opportunity to improve medical conditions, [but] it failed to do so.” D-1092 at 2 (Receiver’s Rep. re Overcrowding, May 14, 2007). The *Coleman* Special Master bemoaned

“the long struggle to remedy the faults [in mental health care] so glaringly revealed in the [*Coleman*] trial . . . in the mid-1990s.” D-1292 at 4.

California argues that it has had insufficient time to respond to the very last orders issued in *Coleman* and *Plata*, complaining in particular of a lack of opportunity to implement the *Plata* Receiver’s plan. State Br. 15–16, 21–22. But the PLRA does not require a court to ignore years of failure to comply with multiple orders. The Three-Judge Court concluded that neither the *Plata* Receiver nor the *Coleman* Special Master could produce an effective remedy unless overcrowding was reduced. JS1-App. 143a–145a. The State is not entitled to an endless series of failures, or a years-long hiatus to test whether it will fail yet again to comply with the last remedial order, before a prisoner release order may issue. It is enough that the Three-Judge Court found that the State has repeatedly failed to comply with less onerous orders and that it will continue to do so until overcrowding is reduced.

3. Overcrowding is the primary cause of the violations.

The Three-Judge Court correctly concluded that overcrowding is the primary cause of the violations in the California prison system. *Id.* at 140a–141a. Indeed, the Three-Judge Court found that California had designed the system in a manner destined to produce constitutionally inadequate health care for the anticipated population. *See id.* at 57a. From the 1980s forward, California designed its prisons to house the anticipated excess population, but not to treat them.

Id. at 57a–58a. The prison infrastructures for water, wastewater, electrical, and mechanical systems were designed to accommodate 190% of design capacity in celled prisons and 140% in dormitory prisons. *Id.* at 57a. No accommodation was made, however, for the extra medical and clinical areas this excess population would require. *Id.* at 58a. Moreover, none of the nineteen prisons built in the 1980s and 1990s gave any consideration whatsoever to space for mental health care and treatment. *Id.* (quoting D-1292 at 4–5). Even in 2005, a decade after the *Coleman* judgment and three years after the *Plata* stipulated judgment, California built a prison with full knowledge that the medical and mental health space would be entirely insufficient for the actual inmate population. *Id.* at 176a–177a.

The decision not to provide adequate space for medical and mental health care led, unsurprisingly, to a system that cannot deliver constitutional care to the number of inmates it houses. Seven experts, including four former or current state prison system administrators, testified that overcrowding is the primary cause of the violations and the greatest obstacle to any successful remedy. *Id.* at 126a–133a. California’s medical expert was the only one who did not identify overcrowding as the primary cause of the violation, *id.* at 133a, but the Three-Judge Court found his opinions to be “overwhelmingly outweighed by the testimony of the numerous other, more qualified experts.” *Id.* at 136a. California’s mental health expert agreed that overcrowding was the primary cause of constitutional violations in the reception centers through which inmates enter the system (and where they often remain for months). *Id.* at 138a, 90a–92a. Ultimately, the court

concluded that “[o]vercrowding is the one factor that negatively impacts almost every other matter that must be addressed to create a minimally adequate medical care delivery system for California’s prisons.” *Id.* at 134a (quoting *Coleman*-D.E. 3231-13 ¶ 9 (Ronald M. Shansky, M.D., 2d Supp. Rep., Sept. 10, 2008)).

California responds with a strained attempt to rewrite the PLRA to require a finding that overcrowding is the sole cause of the violations such that “eliminating crowding *alone*” should effect a remedy. State Br. at 30 (emphasis added). This is not what the PLRA requires. As the Three-Judge Court noted, “We need not find that crowding is the *only* cause, but simply that it is the *primary* one. In the end, we agree with the former Executive Director of the Texas Department of Corrections Doyle Wayne Scott, who testified that ‘everything revolves around overcrowding.’” JS1-App. 143a (citations omitted).

4. No other relief will remedy the violations.

The Three-Judge Court found that no other relief will remedy the constitutional violations. *Id.* at 143a–168a. The need to address overcrowding is best stated by the *Coleman* Special Master. He notes that over the past fifteen years much effort to remedy the mental health system has occurred, but “many of the achievements have succumbed to the inexorably rising tide of population, leaving behind growing frustration and despair.” D-1292 at 16–17. Likewise, in his May 2007 Report re Overcrowding, the *Plata* Receiver advised the court that, absent a prisoner release order, “the cost and the scope of intrusion by the Federal Court

cannot help but increase, and increase in a very significant manner,” to remedy the violations. JS1-App. 156a (quoting D-1092 at 41). In fact, the Receiver opined that it might “all but bankrupt the State of California” just to create a medical system adequate to serve the current population coming through the reception center at the California Institute for Men. *Id.* (quoting D-1092 at 41). The Three-Judge Court thus reasonably concluded that “relying on the authority that [the Receiver] possesses to resolve the medical care crisis in the absence of a population reduction order does not offer a feasible alternative.” *Id.*

Thus, the PLRA allows the issuance of a prisoner release order here. If a federal court cannot issue a prisoner release order in this case, then no facts could justify such an order, and the PLRA’s authorization of this final remedy is meaningless. Yet, when a constitutional violation has gone unremedied for many years despite repeated efforts to correct it, “the court has not merely the power but the duty to render a decree which will so far as possible eliminate [the wrong].” *Louisiana v. United States*, 380 U.S. 145, 154 (1965) (affirming order requiring state to remove barriers to voting by African Americans). This Court has before been called upon to make clear when “[t]he time for mere “deliberate speed” has run out,” and the time has arrived for “a plan that promises realistically to work, and promises realistically to work now.” *Green v. County Sch. Bd.*, 391 U.S. 430, 438–39 (1968) (citation omitted) (requiring school board to adopt effective remedy for segregation fourteen years after decision in *Brown v. Board of Education*, 347 U.S. 483 (1954)).

II. Overcrowding in the California Prison System Also Harms Inmates by Interfering with Their Practice of Religion and Diminishing Their Prospects for Rehabilitation.

In addition to creating abhorrent living conditions and constitutionally deficient medical and mental health care systems, overcrowding in the California prison system also threatens other important rights and interests central to the missions of Amici. The extreme lack of space and resources caused by overcrowding often prevents inmates of faith from assembling with their fellow congregants and keeps out those, including some Amici, who would minister to them. The result is an impairment of inmates' religious observance and practice, including deprivation of rehabilitative religious programming and counseling. As conditions now stand, California will continue to witness only a deepening of the despair and hopelessness that plague its prisons.

No claim for the infringement of religious rights was asserted in this case, and Amici do not seek to insert one. Their aim instead is to highlight for the Court that the crisis-level overcrowding in the California prisons leads to the sacrifice, not only of prisoners' health, but also of their religious practice. This additional, serious harm further supports the prisoners' plea for an affirmance in this case. Federal courts must have the power to order population reductions when overcrowding is so extreme as to nullify other remedies, leaving prisoners to suffer needlessly in mind, body, and spirit.

A. Both the Constitution and Federal Law Protect Inmates' Practice of Religion.

The First Amendment right of individuals to freely exercise their religion has long been held among the most fundamental American principles. *See, e.g., Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 523 (1993) (“The principle that government may not enact laws that suppress religious belief or practice is so well understood that few violations are recorded in our opinions.”). As this Court has recognized, although prisoners must surrender many liberties, “[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution.” *Turner v. Safley*, 482 U.S. 78, 84 (1987).

A central component of nearly every religion is the ability to gather with fellow congregants and engage in group worship and observance. Roman Catholics, for example, have an obligation to attend Mass at least weekly on Sundays, as well as on special feast days. *Catechism of the Catholic Church* ¶¶ 1389, 2180 (2d ed. 2003). Many other Christian denominations, sharing the tradition of Sunday meetings, also follow the Bible’s instruction to come together: “[L]et us consider how to stir up one another to love and good works, not neglecting to meet together, as is the habit of some, but encouraging one another, and all the more as you see the Day drawing near.” *Hebrews* 10:24–25. These Christian practices reflect the teachings of Christ that “where two or three are gathered in my name, there am I in the midst of them.” *Matthew* 18:20. The call to gather for worship is also essential to Judaism. A minyan, or quorum of ten individuals over thirteen years old, is

necessary before a Jewish community can properly offer its prayer. *See, e.g., Mishnah, Megillah, 4, 3.* Moreover, a Jew “must associate himself with the congregation, and not recite his prayers by himself anytime he is able to pray with the congregation.” Maimonides, *Hilkhot T’fillah* 8:1. Islam too places a high value on assembly of the faithful for prayer. Muslim scholars agree that the Jumu’ah, a Friday gathering replacing the usual midday prayer, is an obligation on each individual Muslim. *See, e.g., Abd al-Rahman al-Jaziri, al-Fiqh ala al-Madhabib al-Arba’ah* 375 (Ihya’ al-Turath al-Arabi, Beirut). They point to the Qur’an’s instruction, when the call for prayer goes out, to “come to the remembrance of Allah and leave off business.” *Qur’an* 62:9.

In recognition of these basic tenets of faith, this Court has acknowledged that “[t]he exercise of religion often involves not only belief and profession but the performance of physical acts [such as] assembling with others for a worship service [or] participating in sacramental use of bread and wine.” *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (quoting *Emp’t Div. v. Smith*, 494 U.S. 872, 877 (1990)). The special difficulties inmates face in practicing their faith are highlighted in an encounter Charles Colson, founder of Amicus Prison Fellowship, had with one corrections official who was resistant to accommodating group worship:

He said, “Anybody can go in their cell and practice their own religious beliefs in their own ways,” and he simply reflects a misunderstanding of what Christianity is,

because Christianity is a communal religion. It is one in which we have to be together to practice our faith; to administer the sacraments, and to be part of a community of believers; that's what Christian faith is. So, you can't do it just by worshipping privately in your cell.

Protecting Religious Freedom After Boerne v. Flores: Hearing Before the Subcomm. on the Const. of the H. Comm. on the Judiciary, 105th Cong. 7 (July 14, 1997) (testimony of Charles W. Colson, President, Prison Fellowship), available at http://commdocs.house.gov/committees/judiciary/hju50378.000/hju50378_of.htm.

Federal law also recognizes that prisoners, whose existence is fraught with despair and despondency, are in particular need of the freedom to practice their faith. RLUIPA prohibits the government from imposing a “substantial burden” on a prisoner’s “religious exercise” unless prison officials can demonstrate that burdening religious exercise is the “least restrictive means” of furthering a “compelling governmental interest.” 42 U.S.C. § 2000cc-1(a)(1)–(2). Congress provided this extra measure of protection to prisoners and other institutionalized persons because they are particularly vulnerable to having their religious freedoms stripped away by government. 146 Cong. Rec. S7774, S7775 (2000) (joint statement of Sens. Hatch and Kennedy) (inmate’s “right to practice [his or her] faith is at the mercy of those running the institution Whether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict religious liberty in egregious and unnecessary ways.”); 146 Cong. Rec.

H7190-02 (2000) (statement of Rep. Canady) (RLUIPA was designed to “protect the religious exercise of a class of people particularly vulnerable to government regulation, and that is institutionalized persons.”).

This Court has identified the statute’s core purpose: “RLUIPA thus protects institutionalized persons who are unable freely to attend to their religious needs and are therefore dependent on the government’s permission and accommodation for exercise of their religion.” *Cutter*, 544 U.S. at 721. Effecting this purpose, the Circuit Courts have applied RLUIPA specifically to protect group religious practice in the prison system. *See, e.g., Greene v. Solano County Jail*, 513 F.3d 982, 988 (9th Cir. 2008) (finding that prison policy prohibiting maximum security prisoners from attending group religious services substantially burdened inmate’s RLUIPA rights); *Lovelace v. Lee*, 472 F.3d 174, 187 (4th Cir. 2006) (concluding that disallowing prisoner from group Ramadan observance substantially burdened his RLUIPA rights); *Murphy v. Mo. Dep’t of Corrs.*, 372 F.3d 979, 988–89 (8th Cir. 2004) (remanding for determination of whether denial of opportunity for communal worship violated RLUIPA). The unavoidable reality is that prisoners – no matter how hard they try or how sincere their belief – cannot practice their faith, including attending the worship services of their choice, without an accommodation by the prison.

B. Overcrowding Limits the Space and Resources Available for Religious Services and Programming.

As a result of overcrowding, inmates are crammed in nearly every corner of the California prisons,

including public areas and corridors, with the result that space is unavailable “for anything but the warehousing of bodies.” *Coleman*-D.E. 3231-10 ¶ 10 (Doyle Wayne Scott, Rep., Nov. 9, 2007). Indeed, the Three-Judge Court expressly found that these conditions have crowded out the space that would otherwise be available to accommodate inmate programming, which includes the group exercise of religion and religious programming. JS1-App. 103a (“[N]on-traditional beds are frequently created by ‘converting activity space into inmate housing areas,’ which adversely impacts all inmates by reducing the amount of space available for programs.”) (quoting P-4 at 124 (Reforming Corrections, Rep. of the Corrections Independent Review Panel, June 2004)). Even Governor Schwarzenegger, a Defendant in this action, issued an Emergency Proclamation acknowledging that the “CDCR must house prisoners in areas never designed or intended for inmate housing, including gyms, dayrooms, and program rooms.” P-1 at 1 (Prison Overcrowding State of Emergency Proclamation, Oct. 4, 2006).

Moreover, California prisons’ heavy reliance on lockdowns further impairs the exercise of religion and the provision of programming. Lockdowns occur at an alarming rate in the California prison system, with a total of 449 lockdowns in 2006 alone. JS1-App. 116a (quoting Tr. 218:18–19, 20–25 (Jeffrey A. Beard, Ph.D.)). According to the Three-Judge Court, lockdowns can continue day after day for weeks and even months, with some housing units in a state of lockdown more often than they are not. *Id.* at 117a (quoting Tr. 316:23–317:9 (Prof. Craig Haney)). Not surprisingly, inmates in locked-down units “are essentially without programs

during the periods of time that the lockdown is in place.” *Id.* at 117a (quoting Tr. 316:23–317:9 (Haney)). The record in this case establishes that lockdowns interfere with religious services and other activities. For example, the Special Master specifically observed that inmates under lockdown were unable to participate in group worship services. P-57 at 84 (20th Monitoring Rep. of Special Master, Sept. 12, 2008); *see also* Mason Stockstill, *Chaplain: Prison’s move may have led to violence*, Whittier Daily News, Jan. 20, 2005 (Spokesman for one California prison noted, “if part of [the prison] goes on lockdown, religious services as well as visitations can be suspended.”).

This lack of programming undermines safety within the prisons, endangering inmates, staff, and volunteers. California prisoners suffer from extreme levels of “[i]solation, seclusion, idleness, violence, fear and stress.” JS1-App. 132a (quoting *Coleman-D.E.* 3221 ¶ 117). The CDCR has itself acknowledged that a veritable powder keg results when access to programming and counseling is choked off: “Idleness-related frustration increases the probability of interpersonal conflict and assaults in prison.” P-72 at 15 (CDCR, *Presentation to Senate Select Committee on Prison Population Management and Capacity* (Aug. 15, 2006)). Increased levels of violence may deter volunteers, including those who minister to prisoners, from entering the institutions and may trigger yet another cycle of lockdowns, excluding volunteers altogether. As one long-time volunteer with the Aleph Institute explains, while he looks forward to returning to a California prison each year, “[y]ou can’t kid yourself. It’s difficult work. Security, clearance, it’s always a hassle, and you’re

always limited to certain times. They could have a lockdown and you'll be sent away. But you know when you get there and do it, you're making a difference." Jessica Naiman, *As Yom Kippur Nears, Needs of Jewish Prisoners in Spotlight*, Chabad.org, Sept. 15, 2010, available at http://www.chabad.org/news/article_cdo/aid/1302641/jewish/Yom-Kippur-Behind-Bars.htm.

C. When Religious Services and Programming Are Crowded Out, Those – Like Amici – Who Minister to Prisoners Are Frustrated in Fulfilling Their Religious Mission, to the Detriment of Prisoners, Prisons, and the Community.

As this Court has observed, “since most offenders will eventually return to society, another paramount objective of the corrections system is the rehabilitation of those committed to its custody.” *Pell v. Procunier*, 417 U.S. 817, 823 (1974). Without successful rehabilitation, prisoners are released only to reoffend and return. The Three-Judge Court found that overcrowding in the California prisons produces conditions in which “high-risk inmates do not rehabilitate and low-risk inmates learn new criminal behavior.” JS1-App. at 190a. The State’s own Rehabilitation Strike Team issued a December 2007 report noting that “fully 50% of all exiting California prisoners did not participate in *any* rehabilitation or work program . . . during their entire prison term.” *Id.* at 189a (quoting P-113 at 13) (quoting P-4 at 124 (*Meeting the Challenges of Rehabilitation in California’s Prison and Parole System: A Report from Governor Schwarzenegger’s Rehabilitation Strike Team*, Dec. 2007)). As a result,

California has one of the highest recidivism rates in the nation, with more than two-thirds of those released returning to prison. *Id.* The Three-Judge Court explicitly found that one of the benefits of a reduction in the prison population would be to “improve public safety by rendering possible . . . the expansion and targeting of rehabilitation programming.” *Id.* at 192a.

Through their prison ministries, many Amici seek to fill this void in opportunities for rehabilitation with the goals of both helping the prisoner and guiding him toward productive, rather than destructive, eventual reengagement with the community at large. Amici share a commitment to helping prisoners find a new moral center, improve their lives, reawaken their spirit, and play a more meaningful role in society.⁶ This special interest in the welfare of prisoners flows in part from Biblical and Qur’anic teachings. *See, e.g., Hebrews* 13:3 (“Remember the prisoners, as though in prison with them, and those who are ill-treated, since you yourselves also are in the body.”); *Matthew* 25:36, 40 (“I was in prison and you came to me. . . . Truly, I say to you, as you did it to one of the least of these my brethren, you did it to me.”); *Psalms* 107:13–14 (“Then they cried to the LORD in their trouble and he delivered them from their distress; he brought them out of darkness and gloom, and broke their bonds asunder.”); *Isaiah* 42:6–7 (“I am

6. For example, the Aleph Institute’s Spark of Light Program helps inmates amend their wrongs, seek forgiveness, and have the best possible opportunity to return to society as purposeful, responsible people. Prison Fellowship, among other things, helps prisoners develop leadership qualities and life skills and supports released prisoners in successful reintegration into society.

the LORD, I have called you in righteousness . . . to bring out the prisoners from the dungeon, from the prison those who sit in darkness.”); *Qur’an* 76:8 (“And feed with food the needy wretch, the orphan and the prisoner, for love of Him . . .”).

Following such scriptural commands, many Amici and their counterparts nationwide consider prison ministry to be central, even obligatory, to the fulfillment of the practice of their faith. Prison ministry has a long and esteemed heritage: “Since the inception of the penitentiary, prison chaplains have played an integral, if changing, role in the lives of incarcerated offenders. Indeed, chaplains were arguably the first to provide inmates with services and, as such, are credited with being the first member[s] of the prison staff responsible for the rehabilitation of prisoners.” Jody L. Sundt et al., *The Role of the Prison Chaplain in Rehabilitation, reprinted in Religion, the Community, and the Rehabilitation of Criminal Offenders* 59, 61 (Thomas P. O’Connor & Nathaniel J. Pallone eds., 2002). Amici and likeminded individuals and organizations around the country continue today to share their faith with prisoners and to assist them in developing the traits they need to turn their lives around.

Although research is ongoing, studies suggest a positive correlation between religious programming and rehabilitation. For example, inmates who participate in religious programming have fewer disciplinary incidents while in prison. Thomas P. O’Connor & Michael Perreyclear, *Prison Religion in Action and Its Influence on Offender Rehabilitation, reprinted in Religion, the Community, and the Rehabilitation of*

Criminal Offenders, *supra*, 11, 27 (“[A]n inmate’s chance of committing an infraction goes down as his rate of attendance at any religious program goes up [T]he more religious sessions the men attended the better the chance that they had no infractions.”). Further empirical research points to a correlation between religious programming and successful rehabilitative efforts, including a reduction in recidivism. Byron R. Johnson, *Religious Programs and Recidivism Among Former Inmates in Prison Fellowship Programs: A Long-Term Follow-Up Study*, 21 Just. Q. 329, 343 (2004) (finding reductions in short-term re-arrest rate among most frequent participants in Bible study). Positive impacts are only realized, however, by the availability of consistent and immersive programming – exactly what is lost due to California’s “warehousing of bodies” approach to incarceration. O’Connor & Perreyclear, *supra*, at 28 (“If inmates are to benefit from [religious programming], it seems they must become involved at a certain level of intensity. Mere attendance at the odd worship service, Bible study, or Jumuah prayer simply is not enough to bring about change or development.”).

Many correctional administrators likewise recognize that religious practice can be instrumental in maintaining inmates’ sense of hope and purpose. Staff at San Quentin State Prison “report that the religious activities help to instill in inmates morals [and] values and contribute to behavioral changes that are critical to their success as parolees and the safety of the community. As one official described the dynamic: ‘Same mind, same results; changed mind, changed results.’” D-772 at 48 (Cal. Little Hoover Comm’n, *Back to the Community: Safe & Sound Parole Policies* (2003)). The

CDCR has found that inmates who choose to participate in religious programming are less apt to have behavioral problems. P-173 at 20 (CDCR, *Inmate Population, Rehabilitation, and Housing Management Plan* (2006)); see also Scott Smith, *An Appeal to the Divine: Whatever's in Their Past, Whatever Their Motivation, Faith Finds a Way Between the Bars*, Stockton Record, July 12, 2009 (reporting recognition by CDCR official that free exercise of religion has positive impact on inmates' lives). Moreover, an expert panel assembled by the CDCR recognized that successful rehabilitation and reentry are supported by forging bonds between inmates and their communities, which is a key aspect of religious programming and prison ministry. D-652 at 19 (CDCR, *A Roadmap for Effective Offender Programming in California* (2007)) ("The state should empower the community – families, neighborhoods, religious and cultural institutions, businesses – to reduce crime through deliberate efforts that assist offenders under correctional control and provide support to reduce criminal behavior.")).

By stifling religious services and programs, and shutting out those who would minister to prisoners, the California prison system's endemic overcrowding does more than cause physical and mental suffering. It poses an obstacle to the rehabilitation and redemption of inmates who would otherwise choose to practice their faith. This deprivation only exacerbates the despair that permeates the California prison system. Federal courts must not look away from their obligation to restore constitutional protections to inmates when other remedies have failed.

CONCLUSION

For these reasons, Amici respectfully urge the Court to affirm the order of the Three-Judge Court.

Respectfully submitted,

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APPENDIX

**APPENDIX A — STATEMENTS OF
INTEREST OF AMICI CURIAE**

PRISON FELLOWSHIP

Amicus Curiae Prison Fellowship (PF) is the largest prison ministry in the world, partnering with thousands of churches and tens of thousands of volunteers in caring for prisoners, ex-prisoners, and their families. Founded thirty years ago by Chuck Colson, who served as special counsel to President Nixon and went to prison in 1975 for Watergate-related crimes, PF carries out its mission both in service to Jesus Christ and in contribution to restoring peace to our communities endangered by crime. Among other things, PF: (i) provides in-prison seminars and special events that expose prisoners to the Gospel, teach biblical values and their application, and develop leadership qualities and life skills; (ii) develops mentoring relationships that help prisoners mature through coaching and accountability; and (iii) supports released prisoners in a successful restoration to their families and society. As founder Chuck Colson has explained, “God has given us a vision and a ministry to go to the last, the least, and the lost of our society and bring hope to them.”

ALEPH INSTITUTE

Amicus Curiae Aleph Institute is a non-profit Jewish educational, humanitarian, and advocacy organization. Aleph provides educational materials to the children of Jewish inmates; counseling to spouses, parents, and children; and financial assistance to families in need. The Spark of Light program is the only national program

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that serves Jewish people incarcerated in the United States to ensure that they stay connected to their families, communities, and Jewish heritage. Spark of Light social programs and services provide for the religious, rehabilitation, and humanitarian needs of individuals and their families from the moment of arrest, during the pre-sentencing stage and trial, and throughout their imprisonment. Spark of Light helps inmates amend their wrongs, seek forgiveness, and have the best possible opportunity to return to society as purposeful, responsible people.

AMERICAN FRIENDS SERVICE COMMITTEE

Amicus Curiae American Friends Service Committee (AFSC) is a Quaker organization, founded in 1917, that includes people of various faiths committed to social justice, peace, and humanitarian service. AFSC is guided by belief in the worth of every person and faith in the power of love to overcome violence and injustice. AFSC Healing Justice Programs provide services to prisoners and their families, and conduct research, public education, and advocacy on conditions of confinement, alternatives to incarceration, mitigating prison violence, and enabling successful prisoner re-entry. AFSC has engaged in such work for over a half-century in California. AFSC believes that the State has a moral obligation to provide for prisoners' basic needs, when their liberty has been taken away.

*Appendix A***CALIFORNIA COUNCIL OF CHURCHES**

Amicus Curiae California Council of Churches is an organization whose membership comprises more than 4,000 of California's Christian congregations from 51 denominations, including both mainstream and progressive Protestant and Orthodox Christian communities. The Council advocates for social justice on behalf of its member congregations and denominations, many of which maintain active prison ministries in California and all of which support the view that prisoners, like all others created in the image of God, deserve humane treatment, decent conditions of incarceration, and an opportunity to seek redemption through religion.

**FRIENDS COMMITTEE ON
LEGISLATION OF CALIFORNIA**

Amicus Curiae Friends Committee on Legislation of California (FCLCA) is a statewide advocacy organization founded in 1952 by Members of the Religious Society of Friends. Guided by Quaker values and the belief that God inheres in every person, FCLCA advocates for California laws that are just, compassionate, and respectful of the worth of every person. Friends have a historical commitment to prison reform, and FCLCA counts California prisoners and their families among our constituencies, providing them with information and education on California politics. Through our advocacy and our prior participation in the Statewide Advisory Council on Institutional Religion, FCLCA is keenly

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aware of the detrimental effects prison overcrowding has on rehabilitative programming and religious services and has advocated for alternatives to incarceration for persons convicted of low-level offenses. To reduce prison violence, FCLCA took a lead role in expanding into more California prisons the Alternatives to Violence Project, a collaboration between Quakers and prisoners that has been embraced by the California Department of Corrections and Rehabilitation.

**GENERAL SYNOD OF THE
UNITED CHURCH OF CHRIST**

Amicus Curiae General Synod of the United Church of Christ is the representative body of the national setting of the United Church of Christ (UCC) and is composed of delegates chosen by its Conferences, from member churches, voting members of Boards of Directors of Covenanted Ministries who have been elected by General Synod as described in the Bylaws of the UCC, and of ex officio delegates. The UCC was formed in 1957, by the union of the Evangelical and Reformed Church and The General Council of the Congregational Christian Churches of the United States in order to express more fully the oneness in Christ of the churches composing it, to make more effective their common witness in Christ, and to serve God's people in the world. The UCC has 5,600 churches in the United States, with a membership of approximately 1.2 million. The General Synod of the UCC, various settings of the UCC, and its predecessor denominations, have a rich heritage of standing in solidarity with those who are

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marginalized, oppressed, and who suffer under the tyranny of injustice. At its tenth and eleventh gatherings, the General Synod sought to emphasize the involvement of the United Church of Christ in a national campaign to promote progressive changes in the American Criminal Justice and Penal Systems, and at its twenty-first gathering the General Synod passed a resolution advocating in part for caps on prison populations.

**ISLAMIC SHURA COUNCIL
OF SOUTHERN CALIFORNIA**

Amicus Curiae Islamic Shura Council of Southern California is an umbrella organization of Mosques and Muslim organizations and it assists its member organizations in serving the Muslim community and the society-at-large. It represents the consensus of its members and coordinates community activities, enables effective communications, advocates on behalf of its member organizations, and fosters leadership development. Shura Council's Executive Director, Shakeel Syed, has been serving California state and federal institutions as a volunteer chaplain for more than two decades.

**LEADERSHIP CONFERENCE
OF WOMEN RELIGIOUS**

Amicus Curiae Leadership Conference of Women Religious (LCWR) is a membership organization of leaders of Catholic women religious in the United States,

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whose members represent more than ninety percent of the 59,000 Catholic sisters in this country. The core mission of the LCWR and our members is to further the Gospel in today's world. The LCWR has a long history of active concern for human life and dignity. Jesus himself was an abused prisoner, and in his description of the Last Judgment, he identifies himself with all who suffer, including prisoners: "I was ill and you comforted me, in prison and you came to visit me." *Matthew 25:36*. Some LCWR members are residents of California; some sisters across the country are engaged in prison ministry; and many of our members are involved in Catholic health care ministry. While overcrowding in prisons across the country leads to illness and avoidable deaths, conditions in California prisons are particularly appalling. We hold in prayer all prisoners and guards held hostage by the "state of emergency" articulated by Governor Schwarzenegger.

NATIONAL ASSOCIATION OF EVANGELICALS

Amicus Curiae National Association of Evangelicals (NAE) is the largest network of evangelical churches, denominations, colleges, and independent ministries in the United States. It serves 50 member denominations and associations, representing 45,000 local churches and millions of Christians. The NAE serves as the collective voice of evangelical churches and other religious ministries, which engage in prison visitation and service ministries following the direct teachings of Scripture to "remember those in prison as if you were their fellow prisoners." *Hebrews 13:3*; see also *Matthew 25:36*. The

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NAE believes that religious freedom is a gift from God that the government does not create but is charged to protect for all persons including prisoners. NAE recognizes imprisoned believers as the “church-behind-the-walls,” which should enjoy the same religious freedoms and protections as those on the outside. The NAE also believes that the Christian message of faith, forgiveness, and hope is the most powerful force for the rehabilitation of those who are behind bars as they prepare to reenter society, and that it is therefore critical for prison systems to make adequate provision for the free exercise of religion by all prisoners.

NATIONAL COUNCIL OF CHURCHES

The National Council of Churches, also known as the National Council of the Churches of Christ in the USA, is a community of 35 Protestant, Anglican, Orthodox, historic African-American, and Living Peace member faith groups, which include 45 million persons in more than 100,000 local congregations in communities across the nation. Its positions on public issues are taken on the basis of policies developed by its General Assembly. The National Council of Churches is a member of the coalition that helped create RLUIPA, in part to protect the rights of institutionalized persons to access religious and spiritual services and to address religious discrimination experienced both by member communions and other religious groups.

*Appendix A***PAULIST NATIONAL CATHOLIC
EVANGELIZATION ASSOCIATION**

Amicus Curiae Paulist National Catholic Evangelization Association (the Association), through its Prison Ministry (the Ministry), provides religious material for Catholics incarcerated in federal, state, and county prisons. The Ministry supports prisoners in pursuing spiritual and personal growth under difficult circumstances and helps them preserve their Catholic faith and seek redemption and salvation. The Ministry is almost two decades old. It sends newsletters quarterly to more than 500 prison chaplains for distribution to prisoners, delivers thousands of Bibles to prisoners through Catholic chaplains, and provides a book on the Catholic faith so prisoners can grow in their understanding. The Association is a non-profit apostolic arm of the Paulist Fathers, a national missionary community of Catholic priests.

PROGRESSIVE JEWISH ALLIANCE

Amicus Curiae Progressive Jewish Alliance (PJA) is a non-profit, California-based membership organization, with more than 4,000 members, which educates, advocates, and organizes on issues of peace, equality, diversity, and justice. Founded in 1999 and with offices in Los Angeles and the San Francisco Bay Area, PJA serves as a vehicle connecting Jews to the critical social justice issues of the day, to the life of the cities in which they live, and to the Jewish tradition of working for *tikkun olam* (the repair of the world). PJA's work,

Appendix A

which has included restorative justice, is inspired by the Jewish ethical tradition and is grounded in modern democratic principles. The Jewish tradition gives great weight to the importance of *teshuva* (to turn away from wrongdoing) and *cheshbon ha' nefsh* (attention to matters of ethics). Therefore, the opportunities provided by the correction system for rehabilitation, spiritual reflection, and religious dedication are of great importance to the members of PJA. PJA's institutional support for humane criminal justice policies and our commitment to the Eighth Amendment prohibition of cruel and unusual punishment also counsel concern for the conditions of incarceration and treatment of prisoners by the State.

SOJOURNERS

Amicus Curiae Sojourners is an organization whose mission is to articulate the Biblical call to social justice. An essential grounding for that call is the deeply held belief in the dignity of each human being created in the image of God. We advocate for greater justice for prisoners in our work in Washington, D.C.; provide copies of *Sojourners* magazine to prisoners; and have participated in providing resources and speakers for prison-based theological studies programs. We believe prisoners have a fundamental human and constitutional right to conditions that are humane and that allow them to freely exercise their religion.

*Appendix A***UNION FOR REFORM JUDAISM**

Amicus Curiae Union for Reform Judaism is the congregational arm of the Reform Movement in North America, including 900 congregations encompassing 1.5 million Reform Jews. We come to this issue inspired by the words of *Deuteronomy 16:20*, in which the Torah commands us, *Tzedek, tzedek tirdof*, “Justice, justice you shall pursue.” The sages explained that the word (*tzedek*) is repeated not only for emphasis but to teach us that we must be just in our pursuit of justice, that our means must be as just as our ends. As such, we are concerned with the consequences of some forms of treatment for prisoners within the criminal justice system, including ensuring that inmates receive proper medical treatment.

UNITARIAN UNIVERSALIST ASSOCIATION

The Unitarian Universalist Association is a religious association of more than 1,000 congregations in the United States and North America. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. In particular, the Association adopted in 2005 a Statement of Conscience entitled “Criminal Justice and Prison Reform” based upon its fundamental principle of the inherent worth and dignity of every person. The Statement of Conscience deplores the violation of basic human rights in some prisons and calls for a new corrections policy in the United States. The Statement of Conscience also calls for the establishment of Unitarian Universalist prison ministries by local congregations.