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Justices, 5-4, Tell California to Cut Prisoner Population

By **ADAM LIPTAK**

WASHINGTON — Conditions in California’s overcrowded prisons are so bad that they violate the Eighth Amendment’s ban on cruel and unusual punishment, the [Supreme Court ruled](#) on Monday, ordering the state to reduce its prison population by more than 30,000 inmates.

Justice Anthony M. Kennedy, writing for the majority in a 5-to-4 decision that broke along ideological lines, described a prison system that failed to deliver minimal care to prisoners with serious medical and mental health problems and produced “needless suffering and death.”

Justices Antonin Scalia and Samuel A. Alito Jr. filed vigorous dissents. Justice Scalia called the order affirmed by the majority “perhaps the most radical injunction issued by a court in our nation’s history.” Justice Alito said “the majority is gambling with the safety of the people of California.”

The majority opinion included [photographs](#) of inmates crowded into open gymnasium-style rooms and what Justice Kennedy described as “telephone-booth-sized cages without toilets” used to house suicidal inmates. Suicide rates in the state’s prisons, Justice Kennedy wrote, have been 80 percent higher than the average for inmates nationwide. A lower court in the case said it was “an uncontested fact” that “an inmate in one of California’s prisons needlessly dies every six or seven days due to constitutional deficiencies.”

Monday’s ruling in the case, *Brown v. Plata*, No. 09-1233, affirmed an order by a special three-judge federal court requiring state officials to reduce the prison population to 110,000, which is 137.5 percent of the system’s capacity. There have been more than 160,000 inmates in the system in recent years, and there are now more than 140,000.

Prison release orders are rare and hard to obtain, and even advocates for prisoners’ rights

said Monday's decision was unlikely to have a significant impact around the nation.

"California is an extreme case by any measure," said David C. Fathi, director of the American Civil Liberties Union's National Prison Project, which submitted a [brief](#) urging the justices to uphold the lower court's order. "This case involves ongoing, undisputed and lethal constitutional violations. We're not going to see a lot of copycat litigation."

State officials in California will have two years to comply with the order, and they may ask for more time. Justice Kennedy emphasized that the reduction in population need not be achieved solely by releasing prisoners early. Among the other possibilities, he said, are new construction, transfers out of state and using county facilities.

At the same time, Justice Kennedy, citing the lower court decision, said there was "no realistic possibility that California would be able to build itself out of this crisis," in light of the state's financial problems.

The court's more liberal members — Justices Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor and Elena Kagan — joined Justice Kennedy's opinion.

The special court's [decision](#), issued in 2009, addressed two consolidated class-action suits, one filed in 1990, the other in 2001. In 2006, Arnold Schwarzenegger, then governor, said conditions in the state's prisons amounted to a state of emergency.

The majority seemed persuaded that the passage of time required the courts to act.

Justice Scalia summarized his dissent, which was pungent and combative, from the bench. Oral dissents are rare; this was the second of the term. Justice Kennedy looked straight ahead as his colleague spoke, his face frozen in a grim expression.

The decision was the fourth 5-to-4 decision of the term so far. All four of them have found the court's more liberal members on one side and its more conservative members on the other, with Justice Kennedy's swing vote the conclusive one. In the first three cases, Justice Kennedy sided with the conservatives.

On Monday, he went the other way. This was in some ways unsurprising: in his opinions and in speeches, Justice Kennedy has long been critical of what he views as excessively long and harsh sentences.

"A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society,"

Justice Kennedy wrote on Monday.

In his dissent, Justice Scalia wrote that the majority opinion was an example of the problem of courts' overstepping their constitutional authority and institutional expertise in issuing "structural injunctions" in "institutional-reform litigation" rather than addressing legal violations one by one.

He added that the prisoners receiving inadequate care were not necessarily the ones who would be released early.

"Most of them will not be prisoners with medical conditions or severe mental illness," Justice Scalia wrote, "and many will undoubtedly be fine physical specimens who have developed intimidating muscles pumping iron in the prison gym."

In his statement from the bench, Justice Scalia said that the prisoners to be released "are just 46,000 happy-go-lucky felons fortunate enough to be selected." (The justices used varying numbers in describing the number of affected prisoners. California's prison population has been declining.)

Justice Kennedy concluded his majority opinion by saying that the lower court should be flexible in considering how to carry out its order.

Justice Scalia called this concluding part of the majority opinion "a bizarre coda" setting forth "a deliberately ambiguous set of suggestions on how to modify the injunction."

"Perhaps," he went on, "the coda is nothing more than a ceremonial washing of the hands — making it clear for all to see, that if the terrible things sure to happen as a consequence of this outrageous order do happen, they will be none of this court's responsibility. After all, did we not want, and indeed even suggest, something better?"

Justice Clarence Thomas joined Justice Scalia's dissent.

In a second dissent, Justice Alito, joined by Chief Justice John G. Roberts Jr., addressed what he said would be the inevitable impact of the majority decision on public safety in California.

He summarized the decision this way, adding italics for emphasis: "The three-judge court ordered the premature release of approximately *46,000 criminals — the equivalent of three Army divisions.*"

Justice Alito acknowledged that “particular prisoners received shockingly deficient medical care.” But, he added, “such anecdotal evidence cannot be given undue weight” in light of the sheer size of California’s prison system, which was at its height “larger than that of many medium-sized cities” like Bridgeport, Conn.; Eugene, Ore.; and Savannah, Ga.

“I fear that today’s decision, like prior prisoner-release orders, will lead to a grim roster of victims,” Justice Alito wrote. “I hope that I am wrong. In a few years, we will see.”

This article has been revised to reflect the following correction:

Correction: May 25, 2011

A picture caption in some copies on Tuesday with the continuation of an article about the Supreme Court ruling that conditions in California’s overcrowded prisons violate the Eighth Amendment’s ban on cruel and unusual punishment misidentified a justice of the court. It was Antonin Scalia, not Samuel A. Alito Jr.