Supreme Court to review order to slash California's prison population

Kevin Kearney
7 October 2010

On June 14, 2010, the US Supreme Court agreed to hear California Governor Arnold Schwarzenegger's challenge of a court order requiring the state to reduce its prison population by 46,000 inmates. California argues that the panel of federal court judges exceeded its powers relative to the state government by mandating a reduction in inmates.

Behind this legal issue lies an important aspect of the crisis of US capitalism—the decades-long attack on constitutional protections and the movement to draconian criminal sentencing, which have led to overcrowding of prisons to a point that is economically unsustainable. The court's decision in *Schwarzenegger v. Plata* could have a significant impact on the ruling class's ability to manage the economic and political costs of its bloated system of domestic repression.

The case centers on one of the most obvious consequences of prison overcrowding: inadequate inmate health care. Schwarzenegger's move to the US Supreme Court is the culmination of almost a decade of litigation over health care in California's prison system.

The state's prisons are packed to nearly double the inmate population for which they were designed. The court order that is being appealed requires the state to reduce its prison overcrowding to 137.5 percent of design capacity.

The suit, initially brought by the Prison Law Institute in Oakland, California, in April 2001 on behalf of Marciano Plata and several other prisoners, alleged that California prisons were in violation of the 8th Amendment to the Constitution, which bans "cruel and unusual punishment." *Plata* has since become the largest-ever prison class action lawsuit.

A settlement agreement was reached in 2002 that required the state Department of Corrections to address problematic medical care policies and procedures and provide timely access to adequate health care. The settlement gave the state ample time to implement the needed changes, but also empowered an independent medical panel to audit the progress. The issue appeared to be resolved.

Although the dot.com bubble had burst by 2002, the state was still solvent. At that time, it planned to resolve the issue by continuing the prison building and incarceration boom it had pioneered decades earlier.

By 2002, California's prison population had ballooned from fewer than 30,000 to well over 170,000 in a mere 30 years. Over a 23-year period, under both Democratic and Republican governors and with a Democratic-dominated legislature, California erected 23 prisons, each costing roughly $100 million annually to operate. In the same period, the state added just one campus to its university system. California now has 33 prisons in total.

By 2005, the state economy was moving into serious crisis. The real estate bubble that had followed the dot-com bubble was beginning to deflate. The state had failed to fulfill the settlement agreement. In response, the Prison Law Institute petitioned the court to appoint a receiver if the state could not show good cause for the failure. In May 2005, Thelton Henderson, the federal district court judge overseeing *Plata*, issued his own findings of fact detailing the state of prison health care.

He described the situation in California prisons as "horrifying" and "shocking," noting expert analysis revealing widespread medical malpractice and neglect. One such finding determined that an inmate in one of California's prisons needlessly dies every six to seven days due to grossly deficient medical care. A federal receiver was assigned to wrest control of the prison health system from the state.

By 2007, there was general nervousness about inflated home values throughout the state. Nonetheless, Governor Schwarzenegger and a bipartisan coalition in the legislature approved Assembly Bill 900—a $7.4 billion prison bond package for 53,000 new prison beds. At the time, 17,000 of the 173,000 inmates in the prison system were being housed in gymnasiums, day rooms, classrooms and other areas not designed as dormitories.

Federal Judges Henderson and Lawrence Karlton—hearing a similar case on the prison mental health care system named for its lead plaintiff, Ralph Coleman—were not impressed and said the state's prison expansion plan could actually worsen conditions because it simply added beds without new staff.

Five years had passed without state compliance. Frustrated, the judges ruled—on the strength of a rarely used 1995 federal law—that a three-judge panel should be formed to consider imposing population limit to spur the long-awaited reforms. In a written statement, Schwarzenegger said that although he would appeal the ruling, he was confident that his efforts to reduce overcrowding would eventually succeed and a mandatory population cap would not be needed.

The financial meltdown of 2008 further exacerbated the problem. Pressure from the federal judiciary to reform the system or release prisoners was compounded by a deep, seemingly endless budget crisis. State unemployment rates skyrocketed, hundreds of thousands of homes were slated for foreclosure, tax revenues dried up, and the most basic public needs were sacrificed. Yet, at each budget session, the political will to significantly cut the state's bloated prison system never materialized.

In his 2010 State of the State address, Governor Schwarzenegger called for the privatization of the entire prison system.

On January 12, 2010, the three-judge panel issued the now-contested order requiring California to reduce its prison population. However,

the court immediately stayed the order to allow Governor Schwarzenegger to petition the US Supreme Court—meaning the order will not actually be enforced before the case is decided by the high court.

Soon after the order, a piece of emergency legislation signed by the governor went into effect. The plan was to reduce the inmate population by a mere 6,300 in 2010 through early release initiatives.

The scale of the plan was so small that it seemed designed to test the political waters before wading into a bigger early release program. If there were no significant backlash, the governor could simultaneously resolve the federal lawsuit and free up sorely needed funds, allowing him to release prisoners and blame it on the judges, whose lifetime appointments insulated them from political attack.

However, the order immediately provoked the hysterical "anti-crime" constituency—backed by prosecutors, law enforcement and corrections organizations—resistant to the slightest reduction in sentencing. The early release program was immediately opposed by the Sacramento and Orange County sheriffs' unions, both filing lawsuits, and several judges throughout the state have refused to carry out the release mechanism. In May 2010, Schwarzenegger's threat to move another 15,000 nonviolent felons to county jails from state prisons met with similar hostility.

Both big business parties have worked to cultivate "anti-crime" hysteria in the population for decades. As a consequence, both parties are terrified of being labeled "soft on crime" However, they are also increasingly aware that mass anger over the deep and protracted assault on living standards is growing beyond the safe channels of official politics.

It is within this political context that the Supreme Court enters the fray. Schwarzenegger's appeal is in the form of a Writ of Certiorari—legal language for a request that the court review a case—and the Supreme Court can refuse to hear it. Yet at least four of the nine justices accepted the case for hearing not merely on the single issue raised in Schwarzenegger's appeal—whether the panel of federal judges has the power to cut a state's prison population—but "on the merits." This requires a full hearing from both sides and a definitive final ruling based on all the facts.

Since 2006, the Supreme Court has been dominated by a right-wing bloc of five justices, including Anthony Kennedy, all deeply hostile to due process protections. It seems likely that the case was accepted for full hearing because of the right-wing bloc's interest in the matter, and with good reason. Economic conditions have highlighted the national crisis of the "criminal justice" system.

The most important aspect of the crisis is the bipartisan, decades-long attack on the basic rights of citizens, allowing law enforcement officials and prosecutors unprecedented powers to legally bully, harass, arrest and incarcerate citizens with impunity. The same process has diminished due process rights to a shadow of their former strength, in many cases reducing the entire courtroom procedure to a farce. Even the jury trial—the greatest of all due process rights—has been converted into a dangerous gamble for defendants by virtue of draconian increases in sentencing for most felony offenses, violent or not.

The rotten fruits of this can be seen in the slow death of "Miranda rights" and Fourth Amendment privacy protections—originally intended to rein in overly aggressive police work—by a thousand cuts over a single generation, and the admission of police hearsay and prejudicial character evidence in a variety of contested hearings where it was once prohibited.

For more than a decade, many states have enacted statutes making "street terrorism" a crime, exposing minority youth to lengthy prison terms for mere association. All of this and more have facilitated the conviction of thousands of non-violent citizens. After conviction for even the most trivial of offenses, these citizens are subjected to lengthy prison terms via a panoply of harsh sentencing laws and enhancements.

This has begotten a national maze of expensive and overcrowded prisons. The conflict between this entire shameful edifice and the new economic realities is now coming to a head. However, in *Schwarzenegger v. Plata* the Court will, at most, deal only with the aspect of the crisis most troubling for the ruling class: the exorbitant costs of locking up all the new convicts for extended periods even as state and local governments wade into a protracted and unpopular process of cutting budgets for the most essential public services and social programs.

In a November 2009 *New York Review of Books* article, David Cole summed up the scale of the problem succinctly: "With approximately 2.3 million people in prison or jail, the United States incarcerates more people than any other country in the world—by far…. Here, at least, we are an undisputed world leader; we have a 40 percent lead on our closest competitors—Russia and Belarus."

However, what Cole terms "the political addiction to incarceration" might be better understood as the product of a "political addiction to prosecution," given the wholesale liquidation of due process protections that fuels the growth of the prison population.

The dollar cost of maintaining one prisoner in the US ranges from $20,000 to $70,000 per year, far more than tuition at state universities and in many cases more than the annual income of entire families. National spending on prisons and jails has gone from $7 billion in 1980 to $60 billion today. In 2007, the *San Francisco Chronicle* projected California alone would spend $15.4 billion on incarcerating a section of its population by the 2012-2013 fiscal year.

This is simply unsustainable, and the costs become totally unjustifiable when one considers that the vast majority of these prisoners are incarcerated for non-violent offenses—mostly low-level property crimes, drug crimes or minor probation/parole violations. The corporate media's long-term fixation with the most sensational acts of violence has completely distorted public discourse on the topic, obscuring this essential fact while promoting irrational fears.

How the Supreme Court will deal with *Schwarzenegger v. Plata* is uncertain. While the basic contradictions producing the prison crisis are lodged in the crisis of the capitalist system, the court's mishandling of the issue could rapidly exacerbate the problem. The matter is scheduled for hearing November 30.