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UNCONSTITUTIONALLY CROWDED: *BROWN V. PLATA* AND HOW THE SUPREME COURT PUSHED BACK TO KEEP PRISON REFORM LITIGATION ALIVE

*Alicia Bower**

In its May 2011 Brown v. Plata *decision, the U.S. Supreme Court upheld a remedial order that required the potential release of a shockingly large number of California prison inmates. The Court found that, because of overcrowding in its prisons, California had failed to provide adequate health care to its prisoners—a failure that constituted a systemwide violation of the Eighth Amendment's Cruel and Unusual Punishments Clause. In order to reach its ultimate result, however, the Court had to confront the Prison Litigation Reform Act (PLRA), a statute that Congress had enacted to combat precisely the type of prison reform litigation that* Plata *embodied. In the end, the Court found its way through the PLRA's requirements and, in the process, reinforced a strong judicial prerogative to fashion remedies, which now more clearly includes the rare structural injunction.*

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I. INTRODUCTION

California's struggle with its overcrowded prisons is not a new battle.[1] But now, the overcrowding is officially unconstitutional.[2] In its May 2011 decision in *Brown v. Plata*,[3] the U.S. Supreme Court held that overcrowding in California's prisons creates a systemwide violation of the Eighth Amendment's prohibition on cruel and unusual punishment.[4] The Court determined that, primarily as a result of overcrowded conditions, California has failed to provide adequate and timely medical care to its inmates.[5] The individual cases of deficient medical treatment are appalling. In writing for the majority of a divided Court,[6] Justice Kennedy described suicidal patients being held in "telephone-booth sized cages without toilets" for prolonged periods of time because there was simply no other place to hold them.[7] One correctional officer testified that as many as fifty sick prisoners could be held in a twelve-by-twenty-foot cage for up to five hours while they waited for medical treatment.[8] One report found wait times for mental health care as high as twelve months.[9] Another analysis estimated sixty-eight preventable or possibly

1. *See* Arnold Schwarzenegger, Cal. Governor, Prison Overcrowding State of Emergency Proclamation (Oct. 4, 2006), *available at* http://gov.ca.gov/news.php?id=4278; Alison Stateman, *California's Prison Crisis: Be Very Afraid*, TIME (Aug. 14, 2009), http://www.time.com/time/nation/article/0,8599,1916427,00.html; *see also* Brown v. Plata, 131 S. Ct. 1910, 1923–24 (2011) ("The degree of overcrowding in California's prisons is exceptional. California's prisons are designed to house a population just under 80,000, but . . . the population was almost double that. The State's prisons had operated at around 200% of design capacity for at least 11 years. Prisoners are crammed into spaces neither designed nor intended to house inmates.").

2. *See Plata*, 131 S. Ct. at 1922–23.

3. 131 S. Ct. 1910.

4. *See id.* at 1922.

5. *Id.* at 1923.

6. The Court was split 5-4. *Id.* at 1921. Justice Kennedy authored the majority opinion with Justice Ginsburg, Justice Breyer, Justice Sotomayor, and Justice Kagan joining. *Id.* Justice Scalia wrote a dissenting opinion, in which Justice Thomas joined. *Id.*; *see also* Adam Liptak, *Justices, 5-4, Tell California to Cut Prisoner Population*, N.Y. TIMES, May 23, 2011, at A1 ("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 Alito also filed a dissenting opinion, in which Chief Justice Roberts joined. *Plata*, 131 S. Ct. at 1921.

7. *Plata*, 131 S. Ct. at 1924 ("A psychiatric expert reported observing an inmate who had been held in such a cage for nearly 24 hours, standing in a pool of his own urine, unresponsive and nearly catatonic. Prison officials explained they had 'no place to put him.'").

8. *Id.* at 1925.

9. *Id.* at 1924.

preventable deaths in a one-year period.[10] In other words, this report found that a preventable death occurred every six to seven days in the California prison system due to deficiencies in medical treatment.[11]

While the specific conditions and individual cases of inadequate treatment that were highlighted in *Plata* are shocking, the remedy that the Court ultimately upheld to cure the constitutional violations appears shocking in its own right: an order requiring California to reduce its prison population, which could mean the release of tens of thousands of inmates within the next two years.[12] The release order called for a rare structural injunction, a drastic and complex remedy that is aimed at curing constitutional violations by institutions.[13] Despite the Court's deep divide over the proper outcome of the case, the Justices all agreed on the exceptional gravity of the remedy.[14] The extent of the injunction that the Court ordered in *Plata* potentially exceeds any remedial order that the Court has ever issued.

10. *Id.* at 1925 n.4.

11. *Id.* at 1927 ("[I]t is an uncontested fact that, on average, an inmate in one of California's prisons needlessly dies every six to seven days due to constitutional deficiencies in the [California prisons'] medical delivery system." (alterations in original) (discussing the lower court's findings)).

12. *Id.* at 1928. The Court noted that the lower court estimated that the required population reduction could be as high as 46,000 persons. *Id.* at 1923. The Court also noted that, since the time that the appeal process began, the state made a reduction of 9,000 persons. *Id.* Taking this reduction into account, the Court concluded that "a further reduction of 37,000 persons could be required." *Id.*

13. *See generally* Karla Grossenbacher, *Implementing Structural Injunctions: Getting a Remedy When Local Officials Resist*, 80 GEO. L.J. 2227, 2232 (1992) ("The impact of structural litigation reverberates beyond the named individuals or parties involved. Structural litigation can affect entire communities by reallocating social resources and implicating social policy."); *The Supreme Court, 1999 Term—Leading Cases*, 114 HARV. L. REV. 179, 314 (2000) [hereinafter *Leading Cases*] ("Structural reform litigation is best understood when contrasted with conventional adjudication between two individuals in a dispute: in structural reform litigation a judge seeks not to redress a particular injury, but to transform large organizational structures, such as schools or prisons. Accordingly, the remedy is an affirmative, extensive injunction—a command to act, rather than to cease some conduct. The injunction applies to an institution governing and composed of many individuals and requires continued, often long-term, judicial supervision.").

14. Justice Kennedy acknowledged from the outset of his majority opinion that the population reduction that the Court's decision potentially required was of "unprecedented sweep and extent." *Plata*, 131 S. Ct. at 1923. Justice Scalia expressed a similar reaction in his dissent, in which he declared the ordered remedy to be "perhaps the most radical injunction issued by a court in our Nation's history . . . ." *Id.* at 1950 (Scalia, J., dissenting). Likewise, in his dissent, Justice Alito talked of the "radical reduction" that the Court's order required and the "radical nature" of the Court's chosen remedy. *Id.* at 1959–60 (Alito, J., dissenting).

Part II of this Comment provides a basic outline of the facts that led to the Court's decision. Part III presents the majority's reasoning and the opposing arguments and reasoning of Justice Scalia's dissent. Then, Part IV analyzes the impact and significance of the Court's holding. Specifically, this Comment discusses how, despite a federal statute's intended restrictions on prison reform litigation, and more specifically on the judiciary's ability to issue structural injunctions in prison condition cases, *Plata* not only affirmed the Court's ability to issue a structural injunction in the prison reform context but may have actually expanded the general scope of the remedy itself.

II. STATEMENT OF THE CASE

In *Plata*, the Court addressed the seriously deficient mental and medical treatment that California's prison population receives.[15] The case came to the Court as a consolidated matter that combined two separate class action suits filed by California prisoners.[16] The first case, *Coleman v. Wilson*,[17] was brought in 1990 by California inmates who suffered from serious mental disorders.[18] The second, *Plata v. Schwarzenegger*,[19] was brought in 2001 by California inmates who had serious medical conditions.[20] In both cases, the prisoners claimed that the state's inadequate treatment of their health conditions violated the Eighth Amendment's Cruel and Unusual Punishments Clause.[21] Ultimately, the district courts in both cases agreed with the petitioners, finding that the California prison system's inadequate treatment of the inmates violated the Eighth Amendment.[22]

After years of litigation, however, the judges in both cases found that any remedy short of an ordered reduction in the prison population would be ineffective in curing the constitutional

15. *Id.* at 1922 (majority opinion).
16. *Id.*
17. 912 F. Supp. 1282 (E.D. Cal. 1995).
18. Coleman v. Schwarzenegger, No. CIV S-90-0520, 2009 WL 2430820, at *12 (E.D. Cal. Aug. 4, 2009).
19. No. C01-1351, 2005 WL 2932253 (N.D. Cal. Oct. 3, 2005).
20. *Id.* at *1.
21. *Plata*, 131 S. Ct. at 1922–23.
22. *Id.* at 1947.

violations.[23] Eventually, both judges independently requested that a three-judge panel be convened in accordance with 18 U.S.C. § 3626(a).[24] This section reserves the power to enter a prison release order to a three-judge district court, as opposed to a single-judge district court.[25] And, because the judges in both cases believed that a prison release order was necessary to remedy the constitutional violations, both judges independently ordered that a three-judge court be convened.[26] Then, because the cases had such similar subject matter and because the judges made similar requests for a three-judge court, the cases were consolidated.[27] The panel that ultimately heard the consolidated matter consisted of the district court judges from both cases and a judge from the Ninth Circuit.[28]

The three-judge court did in fact issue a prison release order that required California to reduce overcrowding in its prisons by bringing the prison population within 137 percent of the facilities' designed capacities.[29] The three-judge court found that "until the problem of overcrowding is overcome it will be impossible to provide constitutionally compliant care to California's prison population."[30] While the order left room for state officials to determine how the reduction would occur, the court predicted that California would ultimately need to release some prisoners before they had served their full sentences.[31] By the three-judge court's estimate, the number of prisoners requiring release could have been as high as 46,000.[32]

23. *Id.* at 1922.

24. *Id.*

25. 18 U.S.C. § 3626(a)(3)(B) (2006) ("In any civil action in Federal court with respect to prison conditions, a prison release order shall be entered only by a three-judge court . . . ."); *Plata*, 131 S. Ct. at 1922 ("The authority to order release of prisoners as a remedy to cure a systemic violation of the Eighth Amendment is a power reserved to a three-judge district court, not a single-judge district court.").

26. *Plata*, 131 S. Ct. at 1922.

27. *Id.*

28. *Id.*

29. *Id.* at 1923.

30. *Id.* at 1932.

31. *Id.* at 1923. The Court explained that the order required that the release of prisoners occur "absent compliance through new construction, out-of-state transfers, or other means—or modification of the order upon a further showing by the State . . . ." *Id.* However, the Court later rejected new prison construction and out-of-state transfers as possible alternative ways to cure the constitutional violations, citing the state's dire fiscal condition and failed attempts to reduce overcrowding in the past. *Id.* at 1937–38; *see infra* Part III.A.1.

32. *Plata*, 131 S. Ct. at 1923.

On appeal to the Supreme Court, the issue seemed simple enough: Was a remedial order that a lower three-judge court issued "consistent with requirements and procedures set forth in a congressional statute"?[33] The statute at issue was the Prison Litigation Reform Act of 1995 (PLRA), which restricts the circumstances in which a court can issue an order that reduces or limits a prison population.[34] The Court separated the issue into three major components of analysis, each relating to a distinct requirement that the PLRA outlined: (1) whether the lower court found by clear and convincing evidence that "crowding is the primary cause of the violation of a Federal right"; (2) whether the lower court found by clear and convincing evidence that "no other relief [would] remedy the violation of the Federal right"; and (3) whether the relief "extend[ed] no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs."[35] Finding that the three-judge court's ruling did in fact meet these requirements, the Court upheld the prison release order, thereby requiring California to reduce its prison population.[36]

III. REASONING OF THE COURT

While it recognized the "unprecedented sweep and extent" of the remedial order that it upheld in *Plata*, the Court also stressed the similarly unprecedented severity of the constitutional violations.[37] The Court stressed that the violations persisted for years and remained uncorrected.[38] In finding that the three-judge court's ruling met the requirements for a release order under the PLRA, the Court relied heavily both on California's long, failed history to correct the violations and on a finding that there was no realistic likelihood of future corrections.[39] Moreover, the Court emphasized that because the constitutional violations were systemwide, the only appropriate

33. *Id.* at 1922.
34. *Leading Cases*, *supra* note 13, at 310.
35. *Plata*, 131 S. Ct. at 1929 (quoting 18 U.S.C. § 3626(a)(1), (3)(e) (2006)).
36. *Id.*
37. *Id.* at 1923.
38. *Id.* at 1922.
39. *See id.* at 1937–38.

relief was one that was systemwide in nature.[40] It was this systemwide focus that ultimately served as a basis of the resulting structural injunction in the case. Further, it was precisely this systemwide approach that Justice Scalia took issue with in his dissent.[41] In opposing the majority's systemwide approach, Justice Scalia argued that the reform order "violates the terms of the governing statute, ignores bedrock limitations on the power of Article III judges, and takes federal courts wildly beyond their institutional capacity."[42]

A. The Majority's Focus: Past Failures, Unrealistic Alternatives for the Future, and the Need for Systemwide Relief

1. No Other Relief

The Court in *Plata* held that the lower three-judge court did not err when it found that "no other relief will remedy the violation of the Federal right."[43] While the state presented three alternative theories of "other relief" to remedy the constitutional violations, the Court rejected all three.[44] The three proposed remedies were (1) out-of-state transfers of prisoners; (2) new construction of prisons; and (3) additional hiring of medical personnel.[45] In rejecting each of these alternatives, the Court drew a distinction between realistic alternatives and theoretical alternatives, clarifying that the former would be sufficient while the latter would not.[46] While the Court found that each of the alternatives would be effective in theory, they were not realistic "other relief," either standing alone or in combination.[47]

The Court determined that the alternatives were unrealistic for two principle reasons: (1) California failed to effectuate them in the past; and (2) the state could not afford to effectuate them in the

40. *See id.* at 1940–41.
41. *Id.* at 1952 (Scalia, J., dissenting).
42. *Id.* at 1951.
43. *Id.* at 1937 (majority opinion) (quoting 18 U.S.C. § 3626(a)(3)(E)(ii) (2006)).
44. *Id.* at 1937–38.
45. *Id.* at 1937.
46. *See id.* at 1937–38.
47. *Id.* at 1939.

future.[48] Specifically, regarding the alternative of transferring prisoners out of state, the Court found that, because the state had not made any plans to execute this alternative, it was unrealistic to expect that transfers would remedy the violations.[49] The Court further reasoned that even if the state had made such plans, it failed to show that it had either the resources or the capacity to carry out the plans.[50] Similarly, the Court found that the construction of new prisons was an unrealistic form of "other relief" due to the state's budget shortfalls.[51] Finally, the Court found that hiring additional medical personnel would not qualify as "other relief" that "will remedy the violation of the federal right" because the state had been unable to fill vacant positions for years and the Court found no reason to expect any change in the future.[52] While the Court acknowledged that there had been some gains in staffing numbers, the Court reasoned that filling all of the vacant positions was unlikely due to the violent conditions and insufficient space that overcrowding had caused at the prisons.[53]

In the end, despite the state's proposed list of theoretically sound remedial measures, the test for the Court was not what could work but what would work. Ultimately, the Court found that the alternatives that the state presented did not meet that standard. Even more so, the Court rejected the proposition that a combined approach, where all of the alternatives were executed together, would be acceptable.[54] For the Court, the state had simply waited too long to effectively respond to the ongoing constitutional violations.[55] The state's long history of failed remedial orders and the substantial evidence of the "deleterious effects" of the overcrowded conditions made even a combined-effort approach unacceptable.[56]

48. *Id.*
49. *Id.* at 1938.
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.* at 1939.
55. *See id.*
56. *Id.*

2. Narrowly Tailored

The Court in *Plata* found that, as the PLRA requires, the release order that the lower three-judge court issued was narrowly drawn, extended no further than necessary to correct the violations of a federal right, and was the least intrusive means necessary to correct the violations.[57] In explaining these provisions of the PLRA that require that a prison release order be narrowly tailored and in clarifying what these provisions meant for the Court's analysis, the majority wrote, "This means only that the scope of the order must be determined with reference to the constitutional violations established by the specific plaintiffs before the court."[58] The Court also clarified what it was not doing: "This case is unlike cases where courts have impermissibly reached out to control the treatment of [prisoners] or institutions beyond the scope of the violation."[59] Ultimately, the Court rejected the state's argument that the order was too broad simply because the resulting remedy might have positive collateral effects on other prisoners.[60] The Court reasoned that the order to reduce the California prison population, which would affect both present and future inmates, was necessary because any order that only targeted present inmates would not protect "future plaintiffs"—i.e., inmates who might need health care in the future but who would be denied such care due to continued overcrowding.[61]

Moreover, the Court reasoned that while the release order applied to California's entire prison system rather than to individual institutions, it was narrowly tailored because in fact the *entire* system was deficient.[62] The Court pointed to the facts that the *Coleman* court found systemwide violations and the *Plata v. Schwarzenegger* court stipulated to systemwide relief.[63] Therefore, the release order appropriately focused on the entire California prison system and was narrowly tailored.

57. *See id.* at 1941.
58. *Id.*
59. *Id.*
60. *Id.* at 1940.
61. *Id.*
62. *Id.*
63. *Id.*

B. The Dissent's Focus: A Strictly Drawn Statute and Traditional Constitutional Limitations

In his dissent, Justice Scalia found that the constitutional violations that were presented in *Plata* did not justify an "intrusion into the realm of prison administration."[64] Justice Scalia argued that the Court's holding extended Article III courts beyond their capacity.[65] He reasoned that, rather than address the injuries of any particular plaintiff, the injunction attempted to "remedy . . . the running of a prison system with inadequate medical facilities."[66]

Justice Scalia pointed to the fact that it was not the entire prison population that was subjected to cruel and unusual punishment but only certain individuals.[67] He also drew the distinction that, rather than provide for the "decent" operation of various institutions, the Court should forbid the "indecent" treatment of individuals.[68] Additionally, Justice Scalia emphasized a concern for California residents by citing the release of inmates who have spent time "develop[ing] intimidating muscles pumping iron in the prison gym."[69]

IV. PUSHING BACK ON THE PRISON LITIGATION REFORM ACT

The Court's decision in *Plata* accomplished precisely what Congress had attempted to prevent with its enactment of the PLRA.[70]

64. *Id.* at 1928–29; *see id.* at 1953 (Scalia, J., dissenting) ("Even if I accepted the implausible premise that the plaintiffs have established a systemwide violation of the Eighth Amendment, I would dissent from the Court's endorsement of a decrowding order.").

65. *Id.* at 1951.

66. *Id.*

67. *Id.* at 1951–52.

68. *See id.* at 1951.

69. *Id.* at 1953; Steven E.F. Brown, *California Controller Chiang Blasts Prison Department's Waste of Money*, BIZJOURNALS.COM (July 21, 2011, 8:51 AM), http://www.bizjournals.com/losangeles/news/2011/07/21/california-controller-blasts-prison.html ("An inmate who served time at Avenal State Prison in the desert off Interstate 5 near the Kettleman City exit recently laughed when told of Supreme Court Justice Antonin Scalia's complaint in *Brown v. Plata* earlier this year. Scalia, in an oral dissent, said prisoners 'developed intimidating muscles pumping iron in the prison gym.' The former inmate said the prison did have a gym, but that it was filled with triple tier bunk beds." (quoting *Plata*, 131 S. Ct. at 1953 (Scalia, J., dissenting))).

70. *Plata*, 131 S. Ct. at 1959 (Alito, J., dissenting); *see also* Margo Schlanger, *Civil Rights Injunctions over Time: A Case Study of Jail and Prison Court Orders*, 81 N.Y.U. L. REV. 550,

A central goal of the 1996 statute was to put an end to structural reform litigation in cases that deal with deficient prison conditions.[71] The PLRA served as a signal of congressional apprehension toward court involvement in the management and restructuring of prisons in particular.[72] By enacting the PLRA, Congress set high standards for prospective relief in cases where prison conditions are challenged[73] and essentially created a "presumption that injunctions in the prison context are constitutionally suspect."[74] It worked. Reform orders relating to prison conditions decreased dramatically after the passage of the PLRA, and existing orders became increasingly difficult to enforce.[75] The PLRA's congressional check on the judiciary appeared to be successful.

The majority in *Plata*, however, refused to fall in line with this attempted shift in the balance of powers. Instead, the Court firmly reasserted its judicial prerogative to fashion remedies that it deemed necessary.[76] The Court also rejected the idea that Congress could legislate certain realms beyond judicial reach.[77] According to the

554 (2006) ("The Prison Litigation Reform Act (PLRA) made old correctional court orders harder for plaintiffs' counsel to sustain and new ones harder to obtain.").

71. *See Leading Cases*, *supra* note 13, at 318.

72. *See id.* at 310, 315. Justice Alito's dissent expressed a similar sentiment that prisons deserve special treatment. *Plata*, 131 S. Ct. at 1959 (Alito, J., dissenting) ("Decisions regarding state prisons have profound public safety and financial implications . . . ."). Justice Scalia echoed that concern in his dissent. *Id.* at 1955 (Scalia, J., dissenting) ("My general concerns associated with judges' running social institutions are magnified when they run prison systems, and doubly magnified when they force prison officials to release convicted criminals.").

73. *See* Schlanger, *supra* note 70, at 590–95 (discussing four principal provisions of the PLRA that made existing reform orders harder to sustain and new orders harder to obtain: (1) immediate termination; (2) automatic stay; (3) administrative exhaustion; and (4) attorneys' fees limitations). Interestingly, Schlanger argued that while the PLRA's provision limiting prospective relief seemed likely to cause a decline in reform orders, in practice, the provision would not cause such a decline—a foreshadowing that proved true in *Plata*, where the Court jumped these hurdles. *Id.* at 594.

74. *Leading Cases*, *supra* note 13, at 318 (pointing to the automatic stay provision of the PLRA).

75. Schlanger, *supra* note 70, at 554 ("The Prison Litigation Reform Act (PLRA) made old correctional court orders harder for plaintiffs' counsel to sustain and new ones harder to obtain . . . . [T]he 1996 congressional intervention of the PLRA significantly constrained correctional court-order practice.").

76. *Plata*, 131 S. Ct. at 1929.

77. *Id.* at 1937. See *Leading Cases*, *supra* note 13, at 310, for an argument that the PLRA did not interfere with the judicial prerogative; rather, it was an attempt to restore the "state of affairs envisioned by traditional separation of powers principles" because "the goals and methods of structural reform litigation encourage judicial legislation and undermine the traditional concept of the separation of powers."

majority, while courts must be "sensitive" to state interests and the difficulties that are implicated in prison management and reform, courts still must not "shrink from their obligation" to enforce constitutional rights.[78] More importantly, according to the majority, this obligation creates judicial authority to fashion remedies even if a remedy requires "[i]ntrusion into the realm of prison administration."[79] The Court explained that an "intrusion into the realm of . . . administration" is appropriate where there are constitutional violations that (1) are "complex and intractable"; and (2) have persisted for a substantial period of time and remain uncorrected.[80] When these circumstances are present, a court may fashion a "practical remed[y]" that may include systematic changes to shape and control an administration.[81] Using these principles as a guide for its decision, the *Plata* Court affirmed the structural injunction as a remedy that courts can use when governments have failed to cure constitutional violations, even if a congressional statute attempts otherwise.

Furthermore, the Court may have done more than just affirm the structural injunction as an available remedy; it may have actually expanded the scope of the remedy itself. The majority shifted the focus from the injuries of the plaintiffs, namely those with mental and medical injuries, to the California prison system as a whole.[82] Rather than assessing the violations that individual prisoners, or even individual institutions, suffered, the Court instead affirmed an order that targeted the constitutional deficiencies of the entire California prison system.[83] It was that whole system that was in violation of the Constitution due to overcrowding in its prisons.[84] In the end, the Court expanded the interested group to include not only those who *are currently* experiencing or who *have* experienced violations but

78. *Plata*, 131 S. Ct. at 1928 ("Courts must be sensitive to the State's interest in punishment, deterrence, and rehabilitation, as well as the need for deference to experienced and expert prison administrators faced with the difficult and dangerous task of housing large numbers of convicted criminals. Courts nevertheless must not shrink from their obligation to 'enforce the constitutional rights of all "persons," including prisoners.'" (citations omitted)).

79. *Id.* at 1928–29.

80. *See id.* at 1929–30.

81. *Id.* at 1937.

82. *Id.* at 1940.

83. *Id.*

84. *Id.*

also to those who *might* experience violations.[85] This shift suggests that, rather than focus on actual violations, the Court tried to provide for a better prison system as a whole. However, this shift invokes issues of standing and the actual injury requirement; the Court has specifically denied relief where the claim depended on the petitioners' ability to show actual widespread injury rather than isolated instances of actual injury.[86]

V. CONCLUSION

With *Brown v. Plata*, the U.S. Supreme Court upheld perhaps the most extreme remedial order that it has ever issued. The structural injunction that the Court upheld called for the early release of a shockingly large number of California inmates. Beyond the practical implications of the order, the Court in *Plata* clearly signaled that structural injunctions in prison reform litigation remain a valid exercise of judicial power. Even more, the Court may have signaled an expansion of the scope of the structural injunction remedy by focusing on the potential, rather than the actual, constitutional deficiencies in the California prison system. The Court reached its ultimate conclusion, moreover, despite a congressional statute that was aimed at preventing precisely this type of judicial decision-making in this context; the Court ultimately pushed back on the PLRA in an effort to reaffirm its own broad equitable powers. With the Court's position clear, a new question arises: Will Congress now decide to push back on *Brown v. Plata*?

85. *Id.*

86. *See* Lewis v. Casey, 518 U.S. 343, 349–52 (1996); Allen v. Wright, 468 U.S. 737, 750–52 (1984).