

In the Supreme Court of the State of California

In re

**GREGORY GADLIN,
On Habeas Corpus.**

SUPREME COURT
FILED

Case No. S254599 AUG 15 2019

Jorge Navarrete Clerk

Deputy

Court of Appeal, Second Appellate District, Case No. B289852
Los Angeles County Superior Court, Case No. BA165439
The Honorable William C. Ryan, Judge

**MOTION FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
CHARLES CHUNG**

XAVIER BECERRA
Attorney General of California
PHILLIP J. LINDSAY
Senior Assistant Attorney General
AMANDA J. MURRAY
Supervising Deputy Attorney General
*CHARLES CHUNG
Deputy Attorney General
State Bar No. 248806
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6026
Fax: (213) 897-2808
Email: DocketingLAAWT@doj.ca.gov
Charles.Chung@doj.ca.gov
Attorneys for Respondent

In the Supreme Court of the State of California

In re

**GREGORY GADLIN,
On Habeas Corpus.**

Case No. S254599

Court of Appeal, Second Appellate District, Case No. B289852
Los Angeles County Superior Court, Case No. BA165439
The Honorable William C. Ryan, Judge

**MOTION FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
CHARLES CHUNG**

XAVIER BECERRA
Attorney General of California
PHILLIP J. LINDSAY
Senior Assistant Attorney General
AMANDA J. MURRAY
Supervising Deputy Attorney General
*CHARLES CHUNG
Deputy Attorney General
State Bar No. 248806
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6026
Fax: (213) 897-2808
Email: DocketingLAAWT@doj.ca.gov
Charles.Chung@doj.ca.gov
Attorneys for Respondent

TO GREGORY GADLIN AND HIS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that respondent Department of Corrections and Rehabilitation hereby moves this Court to take judicial notice, under rules 8.252(a) and 8.520(g) of the California Rules of Court, of the following records from the United States District Court for the Eastern District of California in the consolidated cases *Coleman v. Brown* (E.D.Cal., No. 90-cv-0520) and *Plata v. Brown* (N.D.Cal., No. C01-1351) (hereinafter *Coleman/Plata*)¹:

Exhibit A: February 10, 2014 court order granting in part and denying in part defendants' request for extension of time to comply with court-ordered reduction of prison population.

Exhibit B: November 14, 2014 court order granting in part plaintiff's motion for enforcement order against defendants.

Exhibit C: Defendants' December 1, 2014 report filed in response to the November 14, 2014 order regarding the parole process for non-violent, non-sex-registrant, second-strike inmates.

Exhibit D: June 6, 2017 stipulation of the parties requesting modification of the February 10, 2014 order.

Exhibit E: June 20, 2017 court order modifying the February 10, 2014 order.

¹ On January 11, 2019, Governor Gavin Newsom was substituted as defendant in the consolidated cases in place of former Governor Edmund G. Brown Jr.

This motion is based on this notice of motion, the accompanying memorandum of points and authorities, the declaration of Charles Chung, and the attached exhibits, which are true and correct copies of the documents described.

Dated: August 13, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
PHILLIP J. LINDSAY
Senior Assistant Attorney General
AMANDA J. MURRAY
Supervising Deputy Attorney General

/s/ CHARLES CHUNG

CHARLES CHUNG
Deputy Attorney General
Attorneys for Respondent

MEMORANDUM OF POINTS AND AUTHORITIES

Under Evidence Code section 459, a reviewing court may take judicial notice of a matter that would be subject to discretionary judicial notice by the trial court but that is not part of the record on appeal. (See Evid. Code, § 459, subds. (a), (b); see also *Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702, 719, fn. 4.) Here, the documents attached to the motion as exhibits A, B, C, D, and E were not presented to the court below and do not relate to any proceeding that occurred after the Court of Appeal issued its decision on January 28, 2019.

The documents described in this motion are records of the United States District Court for the Eastern District of California and are properly subject to discretionary judicial notice as “[r]ecords of . . . any court of record of the United States or of any state of the United States.” (Evid. Code, § 452, subd. (d); see, e.g., *People v. Johnson* (2006) 38 Cal.4th 1096, 1103 [taking judicial notice of court documents from a Ninth Circuit Court of Appeals case].)

Exhibits A and B are federal court orders in *Coleman/Plata* authorizing the Department to “[c]reate and implement a new parole determination process through which non-violent second-strikers will be eligible for parole consideration by the Board of Parole Hearings once they have served 50% of their sentence.” (Exh. A, at p. 3.) Exhibit C is the report filed by the *Coleman/Plata* defendants describing the parole process the Department created for non-violent, non-sex-registrant, second-strike offenders who have served 50 percent of their sentence. Exhibit D is the stipulation filed by the *Coleman/Plata* parties informing the federal court of the Proposition 57 parole process and requesting the federal court to vacate its order (Exh. A) requiring the Department to implement a nonviolent parole process. Exhibit E is the federal court’s order suspending the portion of its order (Exh. A) regarding the nonviolent parole process.

The documents described in this motion are relevant to this matter for the reasons explained in the opening brief on the merits. These documents relate to the parole reforms preceding Proposition 57, the Department's consistent policy of excluding sex offenders from parole reforms, and Proposition 57's intent to exclude from parole an inmate previously convicted of a sex offense.

For these reasons, the Department respectfully requests that the Court take judicial notice of the attached documents.

Dated: August 13, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
PHILLIP J. LINDSAY
Senior Assistant Attorney General
AMANDA J. MURRAY
Supervising Deputy Attorney General

/s/ **CHARLES CHUNG**

CHARLES CHUNG
Deputy Attorney General
Attorneys for Respondent

DECLARATION OF CHARLES CHUNG

I, Charles Chung, declare:

1. I am a deputy attorney general in the California Attorney General's Office, which serves as counsel for the California Department of Corrections and Rehabilitation in this matter. I have personal knowledge of the contents of, and may competently testify concerning, this declaration.

2. I execute this declaration under rules 8.252 and 8.54(a)(2) of the California Rules of Court, which require a motion for judicial notice of matters outside the record to be accompanied by a supporting declaration.

3. On July 17, 2019, I accessed the civil docket for *Coleman v. Newsom, et al.*, case number 2:90-cv-0520 through the online case management and electronic case files system for the United States District Court for the Eastern District of California.

4. The documents attached to the motion for judicial notice as exhibits A, B, C, D, and E are true and accurate copies of the electronic records I obtained from the online docket for *Coleman v. Newsom, et al.*, case number 2:90-cv-0520.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration in Los Angeles, California on August 13, 2019.

/s/ Charles Chung

CHARLES CHUNG

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

RALPH COLEMAN, et al.,
Plaintiffs,
v.
EDMUND G. BROWN JR., et al.,
Defendants.

NO. 2:90-cv-0520 LKK DAD (PC)
THREE-JUDGE COURT

MARCIANO PLATA, et al.,
Plaintiffs,
v.
EDMUND G. BROWN JR., et al.,
Defendants.

NO. C01-1351 TEH
THREE-JUDGE COURT
ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' REQUEST FOR
EXTENSION OF DECEMBER 31,
2013 DEADLINE

WHEREAS the Court has read and considered the parties' filings in response to this Court's January 13, 2014 Order;

WHEREAS defendants have represented that, in conformance with the terms of this order, they will develop comprehensive and sustainable prison population-reduction reforms and will consider the establishment of a commission to recommend reforms of state penal and sentencing laws;

1 WHEREAS defendants have represented that they will not appeal or support an
2 appeal of this order, any subsequent order necessary to implement this order, or any order
3 issued by the Compliance Officer to be appointed in conformance herewith that is consistent
4 with the duties of the Compliance Officer as specified in this order, and will not move or
5 support a motion to terminate the relief contained in this order until at least two years after
6 the date of this order and such time as it is firmly established that compliance with the
7 137.5% design capacity benchmark is durable;

8 WHEREAS this order is issued in reliance on defendants' representations; and

9 WHEREAS the Court finds that the order below is narrowly tailored to the
10 constitutional violations identified by the *Plata* and *Coleman* courts, extends no further than
11 necessary to remedy those violations, and is the least intrusive possible remedy.

12 IT IS HEREBY ORDERED that:

13 1. The Court GRANTS defendants' request for an extension of time, but only to
14 February 28, 2016, to comply with this Court's June 30, 2011 Order to reduce California's
15 prison population to 137.5% design capacity.

16 2. The deadline to achieve the ordered reduction in the in-state adult institution
17 population to 137.5% design capacity is extended to **February 28, 2016**. Defendants will
18 meet the following interim and final population reduction benchmarks:

19 (a) 143% of design bed capacity by **June 30, 2014**;

20 (b) 141.5% of design bed capacity by **February 28, 2015**; and

21 (c) 137.5% of design bed capacity by **February 28, 2016**.

22 3. During the extension period, and as long as this Court maintains jurisdiction,
23 defendants shall not increase the current population level of approximately 8,900 inmates
24 housed in out-of-state facilities. Defendants shall also explore ways to attempt to reduce the
25 number of inmates housed in out-of-state facilities to the extent feasible.

26 4. The Court acknowledges that defendants intend to comply with this order in
27 part through a combination of contracting for additional in-state capacity in county jails,
28 community correctional facilities, and a private prison, and through newly enacted programs

1 including the development of additional measures regarding reforms to state penal and
2 sentencing laws designed to reduce the prison population. Defendants shall also immediately
3 implement the following measures:

4 (a) Increase credits prospectively for non-violent second-strike offenders
5 and minimum custody inmates. Non-violent second-strikers will be eligible to earn good
6 time credits at 33.3% and will be eligible to earn milestone credits for completing
7 rehabilitative programs. Minimum custody inmates will be eligible to earn 2-for-1 good time
8 credits to the extent such credits do not deplete participation in fire camps where inmates also
9 earn 2-for-1 good time credits;

10 (b) Create and implement a new parole determination process through
11 which non-violent second-strikers will be eligible for parole consideration by the Board of
12 Parole Hearings once they have served 50% of their sentence;

13 (c) Parole certain inmates serving indeterminate sentences who have
14 already been granted parole by the Board of Parole Hearings but have future parole dates;

15 (d) In consultation with the Receiver's office, finalize and implement an
16 expanded parole process for medically incapacitated inmates;

17 (e) Finalize and implement a new parole process whereby inmates who are
18 60 years of age or older and have served a minimum of twenty-five years of their sentence
19 will be referred to the Board of Parole Hearings to determine suitability for parole;

20 (f) Activate new reentry hubs at a total of 13 designated prisons to be
21 operational within one year from the date of this order;

22 (g) Pursue expansion of pilot reentry programs with additional counties and
23 local communities; and

24 (h) Implement an expanded alternative custody program for female inmates.

25 5. Defendants will report to this Court monthly on the status of measures being
26 taken to reduce the prison population, and on the current in-state and out-of-state adult prison
27 populations. The first report shall be submitted on the 15th of the month following the date
28 of this order and shall continue until further order of the Court.

1 6. The Court will appoint a Compliance Officer for the purpose of bringing
2 defendants into compliance with any missed benchmark by ordering inmate releases. If
3 compliance with any benchmark is not achieved within a 30-day period following the
4 expiration of any missed benchmark, the Compliance Officer shall, within seven days, direct
5 the release of the number of inmates necessary to achieve compliance with the missed
6 benchmark and the measures to be followed in selecting the prisoners to be released. The
7 authority of the Compliance Officer shall extend no further than ordering defendants to
8 release inmates necessary to ensure defendants' compliance with any missed benchmark.

9 (a) In selecting inmates for release, the Compliance Officer shall consider
10 public safety by minimizing any risk of violent re-offense. The Compliance Officer shall not
11 be authorized to order the release of condemned inmates or inmates serving a term of life
12 without the possibility of parole.

13 (b) The Compliance Officer shall have access to all necessary CDCR data
14 and personnel regarding the California prison population, including population projections,
15 risk assessments, recidivism data, statistical data, and prisoner files, and shall receive
16 administrative support from CDCR to the extent needed to carry out the Compliance
17 Officer's duties. In addition, the Compliance Officer may engage the services of a part-time
18 assistant and/or a part-time secretary upon a showing of good cause within the discretion of
19 this Court at a rate of pay to be approved by this Court should the parties disagree. If the
20 Compliance Officer finds good cause to question the accuracy of any data presented to him
21 or her, the Compliance Officer shall have the authority to verify the accuracy of such data.

22 (c) The Compliance Officer shall be compensated for all work or services
23 necessary to ensure compliance with a benchmark, should a benchmark be missed, and all
24 work or services necessary to verify the accuracy of any data presented to him or her by the
25 CDCR, should the Compliance Officer find good cause to question the accuracy of such data.
26 Defendants shall reasonably compensate the Compliance Officer on an hourly basis and for
27 reasonable expenses, and the provisions of 18 U.S.C. § 3626(f) shall not apply.

28

1 7. The Compliance Officer shall retain all powers, access to information, and
2 compensation granted under this order after the final 137.5% benchmark is reached and until
3 it is firmly established that defendants' compliance with the 137.5% benchmark is durable.
4 During this period after compliance with the final benchmark and before such compliance is
5 durable, if two of defendants' monthly reports, consecutive, report a prison population above
6 137.5% design capacity, the Compliance Officer shall, within seven days, direct the release
7 of the number of inmates necessary to bring the prison population to 137.5% design capacity.

8 8. The parties shall meet and confer to attempt to make a joint recommendation to
9 the Court regarding the selection of the Compliance Officer and an appropriate hourly rate of
10 compensation, which may be subject to increase annually. If the parties are not able to agree,
11 they may each recommend up to two candidates for the Court's consideration and a proposed
12 hourly rate. The parties shall file their recommendations, including a description of any
13 recommended candidate's qualifications and an explanation of any proposed hourly rate,
14 within 30 days of the date of this order. The selection of the Compliance Officer and
15 compensation rate rests solely within the Court's discretion, and the Court will not be limited
16 to the parties' recommendations, whether separate or joint.

17 9. To the extent that any state statutory, constitutional, or regulatory provisions,
18 except the California Public Resources Code, impede the implementation of this order or
19 defendants' ability to achieve the population reduction benchmarks, all such laws and
20 regulations are waived. Although the Court does not issue a general waiver of the Public
21 Resources Code, defendants may request waivers, as the need arises, of these statutory
22 provisions that are tailored to specific projects.


23 10. This Court shall maintain jurisdiction over this matter for as long as is
24 necessary to ensure that defendants' compliance with the 137.5% final benchmark is durable,
25 and such durability is firmly established.

26 11. Defendants shall, within 60 days of the date of this order, file with the
27 Compliance Officer under seal, the categories of prisoners who are least likely to reoffend or
28 who might otherwise be candidates for early release (the "Low Risk List") that this Court

1 previously ordered them to create. The Low Risk List shall not be viewed by the
2 Compliance Officer unless and until he or she is ordered to do so by this Court. Similarly,
3 this Court will not inspect the list unless circumstances so warrant. Defendants shall file an
4 amended list every 60 days, should changes to the list become appropriate.

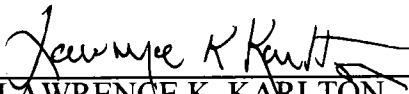
5
6 **IT IS SO ORDERED.**

7
8 Dated: 02/10/14




STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

9
10
11
12 Dated: 02/10/14



LAWRENCE K. KARLTON
SENIOR UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF CALIFORNIA

13
14
15
16 Dated: 02/10/14



THELTON E. HENDERSON
SENIOR UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

17
18
19
20
21
22
23
24
25
26
27
28

Exhibit B

1
2 IN THE UNITED STATES DISTRICT COURTS
3 FOR THE EASTERN DISTRICT OF CALIFORNIA
4 AND THE NORTHERN DISTRICT OF CALIFORNIA
5 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
6 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE
7

8 RALPH COLEMAN, et al.,
9 Plaintiffs,
10 v.
11 EDMUND G. BROWN JR., et al.,
12 Defendants.

NO. 2:90-cv-0520 KJM DAD (PC)
THREE-JUDGE COURT

13
14 MARCIANO PLATA, et al.,
15 Plaintiffs,
16 v.
17 EDMUND G. BROWN JR., et al.,
18 Defendants.

NO. C01-1351 TEH
THREE-JUDGE COURT
ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR
FURTHER ENFORCEMENT
ORDER

19
20 Having carefully reviewed the parties' arguments, as well as this Court's order for
21 defendants to "immediately implement" specific population reduction measures, Feb. 10,
22 2014 Order at 3 (ECF No. 2766/5060),¹ this Court now GRANTS IN PART Plaintiffs'
23 motion for an order for further enforcement (ECF No. 2812/5220). Plaintiffs asked that
24 defendants be ordered to: (1) implement 2-for-1 credits for minimum custody inmates who
25 are ineligible for fire camps; (2) grant 33.3% credits to all non-violent second strikers,

26
27 ¹All filings in this Three-Judge Court are included in the individual docket sheets of
28 both *Plata v. Brown*, No. C01-1351 TEH (N.D. Cal.), and *Coleman v. Brown*, No. 2:90-cv-
0520-KJM DAD (PC) (E.D. Cal.). This Court includes the docket number of *Plata* first, then
Coleman.

1 including those with a prior sex offense; and (3) implement new parole procedures for non-
2 violent second-strikers by January 1, 2015.

3 The Court now GRANTS the third part of plaintiffs' motion. IT IS HEREBY
4 ORDERED that defendants shall, on or before **January 1, 2015**, complete creation and
5 commence operation of "a new parole determination process through which non-violent
6 second-strikers will be eligible for parole consideration by the Board of Parole Hearings once
7 they have served 50% of their sentence." Feb. 10, 2014 Order at 3. The record contains no
8 evidence that defendants cannot implement the required parole process by that date, eleven
9 months after they agreed to do so "promptly," Defs.' Jan. 23, 2014 Proposed Order at 2 (ECF
10 No. 2755/5023) and were ordered to do so "immediately," Feb. 10, 2014 Order at 3.
11 Defendants shall file a report describing the new parole process, including an estimate of the
12 number of inmates who will be affected, on or before **December 1, 2014**.


13 The Compliance Officer shall continue conferring with the parties regarding
14 plaintiffs' first two requests, which remain under submission. The parties shall file a

15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //
28 //


1 stipulation and proposed order if they are able to reach agreement. If they cannot, then they
2 shall file a joint statement narrowing their disputes as much as possible.

3
4 **IT IS SO ORDERED.**

5
6 Dated: 11/14/14


STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

7
8
9
10 Dated: 11/14/14


THELTON E. HENDERSON
SENIOR UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

11
12
13
14 Dated: 11/14/14



KIMBERLY J. MUELLER
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF CALIFORNIA

Exhibit C

1 KAMALA D. HARRIS
Attorney General of California
2 JONATHAN L. WOLFF
Senior Assistant Attorney General
3 JAY C. RUSSELL
PATRICK R. MCKINNEY
4 Supervising Deputy Attorneys General
MANEESH SHARMA, State Bar No. 280084
5 Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
6 San Francisco, CA 94102-7004
Telephone: (415) 703-5553
7 Fax: (415) 703-1234
E-mail: maneesh.sharma@doj.ca.gov
8 *Attorneys for Defendants*

Hanson Bridgett LLP
JERROLD C. SCHAEFER, State Bar No. 39374
PAUL B. MELLO, State Bar No. 179755
WALTER R. SCHNEIDER, State Bar No. 173113
SAMANTHA D. WOLFF, State Bar No. 240280
MEGAN OLIVER THOMPSON, SBN 256654
425 Market Street, 26th Floor
San Francisco, California 94105
Telephone: (415) 777-3200
Fax: (415) 541-9366
E-mail: pmello@hansonbridgett.com

9
10 IN THE UNITED STATES DISTRICT COURTS
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
12 AND THE NORTHERN DISTRICT OF CALIFORNIA
13 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
14 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

15 **RALPH COLEMAN, et al.,**
16 Plaintiffs,
17 v.
18 **EDMUND G. BROWN JR., et al.,**
19 Defendants.
20

2:90-cv-00520 KJM DAD PC
THREE-JUDGE COURT

21 **MARCIANO PLATA, et al.,**
22 Plaintiffs,
23 v.
24 **EDMUND G. BROWN JR., et al.,**
25 Defendants.
26

C01-1351 TEH
THREE-JUDGE COURT
**DEFENDANTS' REPORT ON NEW
PAROLE PROCESS FOR NON-VIOLENT,
NON-SEX-REGISTRANT, SECOND-
STRIKE INMATES IN RESPONSE TO
NOVEMBER 14, 2014 ORDER**

1 In response to the Court's November 14, 2014 Order, the State submits this report on
2 implementation of the Court-ordered parole process for non-violent, non sex-registrant, second-
3 strike inmates who have served 50% of their sentence. Attached as Exhibit 1 is a report from the
4 California Department of Corrections and Rehabilitation describing the new parole process and
5 an estimate of the number of inmates who will be affected by this measure.

6 Dated: December 1, 2014

KAMALA D. HARRIS
Attorney General of California

7
8 By: */s/ Patrick R. McKinney*
PATRICK R. MCKINNEY
Supervising Deputy Attorney General
9 *Attorneys for Defendants*

10 Dated: December 1, 2014

HANSON BRIDGETT LLP

11 By: */s/ Paul B. Mello*
PAUL B. MELLO
12 *Attorneys for Defendants*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

OFFICE OF LEGAL AFFAIRS

Benjamin T. Rice
General Counsel
P.O. Box 942883
Sacramento, CA 94283-0001



December 1, 2014

Paul Mello
Hanson Bridgett
1676 N. California Blvd., Suite 620
Walnut Creek, CA 94596

Dear Mr. Mello:

Attached, please find California Department of Corrections and Rehabilitation's "Report to the 3JP on the Court-Ordered Parole Process for Non-Violent, Non-Sex Registrant, Second-Strike Offenders Who Have Served 50% of Their Sentence."

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin T. Rice".

BENJAMIN T. RICE
General Counsel, Office of Legal Affairs
California Department of Corrections and Rehabilitation

Attachments



**REPORT TO THE THREE-JUDGE COURT ON THE COURT-ORDERED PAROLE
PROCESS FOR NON-VIOLENT, NON-SEX REGISTRANT,
SECOND-STRIKE OFFENDERS WHO HAVE SERVED 50% OF THEIR SENTENCE**

As required by the Court's November 14, 2014 Order, this report describes the status of the court-ordered parole process for non-violent, non-sex-registrant, second-strike offenders who have served 50 percent of their sentence (Second-Strike Parole).

Second-Strike Parole will involve two levels of review: (1) inmates will first be reviewed at their institutions by a classification committee, and, if found eligible for parole consideration, they will be referred to the Board of Parole Hearings (Board);¹ (2) the Board will review all relevant information, including the inmate's criminal history, institutional behavior, and rehabilitation efforts, and decide whether to grant or deny parole based on whether the inmate poses an unreasonable risk to public safety.

Classification committees at each institution will begin referring eligible inmates to the Board for parole consideration on January 1, 2015. Before the Board reviews an inmate for parole eligibility, notice will be mailed to any registered victims and to the district attorney who prosecuted the inmate, and both will have 30 days to submit a written statement to the Board. For inmates who have already served 50 percent of their sentence, the Board will render its decision within 50 days from the date their case is referred to the Board.

Preliminary Review at the Inmates' Institutions

A. Identification and Calculation of Second-Strike Parole Eligibility Date

Qualified second-strike inmates will be eligible for parole after they have completed 50 percent of their total sentence and met uniform screening criteria that are described below and in the attached memorandum, entitled *Process for Reviewing Second Strike Inmates for Referral to the Board of Parole Hearings for Consideration of Release to Parole*. (See Exhibit A.) To qualify for consideration, inmates cannot have a current conviction for a violent offense as defined in Penal Code section 667.5(c), or any sex-offense conviction for which they are required to register under Penal Code section 290.

For inmates admitted to CDCR after January 1, 2015, CDCR will make an eligibility determination when the inmate first arrives to prison. For current CDCR inmates, CDCR will calculate a Second-Strike Parole eligibility date, which is the date at which an inmate will have

¹ The classification committee is an existing multi-member committee at each CDCR institution chaired by a facility captain, which establishes the inmate's custody level and classification score, their housing and work assignments, and any placements for vocational or educational programs.

served a total of 50 percent of their actual sentence, exclusive of any pre-sentence or post-sentence credits the inmate may have earned.² CDCR staff will educate all potentially eligible inmates about the Second-Strike Parole process—including their parole eligibility date, the process of referral to the Board for parole consideration, and criteria that will exclude inmates from parole consideration—at their annual classification committee review. Currently, inmates appear before their classification committee each year (the “annual review”) to discuss adjustments to their classification score or housing placement, any disciplinary action in the past year, changes to privileges and credits, and any other issues concerning the inmate. The annual review—which already seeks to promote positive behavior and encourage rehabilitative programming—is an ideal setting to describe the new Second-Strike Parole process to inmates and to further incentivize inmates’ rehabilitative efforts.

B. Referral Process

Beginning on January 1, 2015, the classification committee will consider inmates’ Second-Strike Parole eligibility date as part of the regularly scheduled annual reviews. Qualified second-strike inmates who are within 12 months of their Second-Strike Parole eligibility date (50 percent of time served), or who have already reached the calculated 50 percent time served date, will be referred to the Board, unless the inmate is excluded for one of the following reasons:³

- The inmate is required to register pursuant to Penal Code section 290 based on a current or prior sex-offense conviction.
- The inmate’s current commitment offense is a violent offense pursuant to Penal Code section 667.5(c).
- The inmate has recently served or is serving a Security Housing Unit (SHU) term for serious disciplinary behavior or for participation in the activities of a prison gang or Security Threat Group. If an inmate has served a SHU term within five years of the date of the inmate’s annual review, the inmate is ineligible for referral to the Board.
- The inmate was found guilty of any Division A-1 or A-2 serious Rules Violation Report as defined in Section 3323 of Title 15 of the California Code of Regulations, within the last five years. These are the most serious rule violations in prison and amount to felony crimes. Qualifying offenses include murder, battery causing serious injury, rape, escape with force or violence, and arson involving damage to a structure or causing serious bodily injury. The inmate will remain ineligible for referral to the Board for five years from the date of the last rules violation.
- The inmate has been placed on Work Group C status as defined in Section 3044(b)(5) of Title 15 in the past year. Inmates placed on Work Group C are those who repeatedly refuse to accept or perform a work assignment, or have a history of serious disciplinary

² For example, if an inmate has a four-year sentence, his or her Second-Strike Parole eligibility date will occur in year two, regardless of the type of credits the inmate earns.

³ In addition, inmates whose earliest possible release date is within six months of the inmate’s Second-Strike Parole eligibility date will not be considered for this measure. By the time such inmates progress through the Second-Strike Parole process, the potential sentence reduction if granted parole would be minimal and does not justify the resources required for their inclusion in the new process.

behavior. The inmate will remain ineligible for referral to the Board for one year from the date he or she is removed from Work Group C status.

- The inmate has been found guilty of two or more serious rules violations as defined in Section 3315 of Title 15 in the past year. The inmate remains ineligible for referral to the Board for one year following the date of a guilty finding on the last rules violation.
- The inmate has been found guilty of a drug-related offense, as defined in Section 3016 of Title 15, or refused to provide a urine sample, as required by Section 3290(d) of Title 15, in the past year. The inmate remains ineligible for referral to the Board for one year from the date of the last drug-related rules violation or refusal.
- The inmate has been found guilty of any rules violation committed at the behest of or in connection with a designated prison gang or Security Threat Group in the past year. The inmate remains ineligible for referral to the Board for one year from the date of a guilty finding on the rules violation.⁴

The screening and referral criteria are designed to prevent the release of inmates who pose an unreasonable risk to public safety, and to foster incentives for inmates to remain discipline-free, to abstain from substance use, and to encourage completion of valuable rehabilitative programming and work assignments.

If an inmate commits a rules violation after he or she has been referred to the Board, the referral shall be suspended and returned to the classification committee for further review. The classification committee shall reconvene as soon as practicable and determine whether the referral to the Board should be rescinded or allowed to proceed based on the seriousness of the rules violation.

Review by the Board of Parole Hearings

Once an inmate has been deemed eligible for referral to the Board for parole consideration, the Board will send a letter within five calendar days of the referral notifying (1) the prosecutor(s) from the inmate's county/counties of commitment, and (2) any victims registered with the Office of Victim and Survivor Rights and Services. The Board will afford these parties 30 days to provide written comment and input concerning the inmate's potential parole.

After the notice and comment period has closed, a Board hearing officer will review all relevant information, including the inmate's criminal history, institutional behavior, rehabilitation efforts, and written statements from interested parties, and will approve or deny the inmate's parole. Ultimately, the Board's decision will be based on whether the inmate's parole would pose an unreasonable risk to public safety. The Board will issue a written statement of the decision to grant or deny parole within 50 days from the date the case was referred to the Board or, if the inmate has not yet served 50 percent of his or her sentence, the Board will render its decision once the inmate is within 60 days of his or her 50 percent time served date.

An inmate who is approved for parole by the Board shall be discharged to State parole or Post Release Community Supervision. During the period following the Board's decision, CDCR will notify local law-enforcement agencies and probation offices, and the Division of Adult Parole

⁴ All inmates have the right to appeal a classification committee's decision not to refer the offender to the Board for parole consideration. (See Cal. Code Regs. tit. 15, § 3084.)

Operations will complete the pre-parole review process. CDCR staff will also work with the inmate to provide identification cards, register the inmate for available medical and mental-health-care services, and identify post-release housing and transition services.

If parole is denied, the inmate will be reviewed again for referral at their next annual review.

The Number of Inmates Affected:

CDCR estimates that in 2015, the number of inmates who will be referred to the Board for parole consideration under the Second-Strike Parole process will be approximately 5,000-6,000. Not all of those inmates will be granted parole, and CDCR is unable to predict the Board's grant or denial rate under this new measure.

Exhibit A

State of California

Department of Corrections and Rehabilitation

Memorandum

Date

To : Associate Directors, Division of Adult Institutions
Wardens
Classification & Parole Representatives
Case Records Managers
Board of Parole Hearings

Subject: **PROCESS FOR REVIEWING SECOND STRIKE INMATES FOR REFERRAL TO THE BOARD OF PAROLE HEARINGS FOR CONSIDERATION OF RELEASE TO PAROLE**

The purpose of this memorandum is to provide direction regarding the consideration for release of second strike inmates to parole supervision after serving 50 percent of their actual sentence. This is in accordance with the California Department of Corrections and Rehabilitation's (CDCR) obligation to comply with federal court orders. Please ensure all Correctional Counselors, Case Records staff, and staff participating in classification committee actions is provided training on this information.

This process is specifically for inmates identified as "**second strikers**"—inmates whose terms doubled pursuant to Penal Code Section 667 (b)-(i) or Penal Code Section 1170.12. Effective January 1, 2015, all second strike inmates who have served 50 percent of their actual sentence, or who are within 12 months of their 50 percent time served date (as calculated by the Correctional Case Records Analyst (CCRA)), shall be reviewed at their annual review for potential referral to the Board of Parole Hearings (BPH) for parole consideration.

Case Records

In addition to the Earliest Possible Release Date (EPRD), all Non-Violent Second Strike (NVSS) inmates that meet the criteria shall have a parole consideration review date calculated. Case Records Unit will provide a list of inmates for the existing population that will require review. Additionally, new inmate arrivals shall be reviewed for determination of eligibility at the intake audit. Exclusionary criteria (detailed below) includes inmates who are required to register pursuant to Penal Code Section 290 and/or have a commitment for a violent offense, whether controlling or non-controlling, pursuant to Penal Code Section 667.5(c).

The NVSS 50 percent served date is based on actual continuous time served in custody. Conduct credit, whether in county jail or State prison, shall not be applied. The CCRA will enter a case note into the Strategic Offender Management System (SOMS) reflecting the calculated 50 percent date, when the inmate meets the eligibility criteria for NVSS. Case Records will scan a NVSS notice into the alert section of Electronic Records Management System (ERMS) along with the CDCR Form 1897-U calculation worksheet. Case Records

Associate Directors, Division of Adult Institutions
Wardens
Classification and Parole Representatives
Case Records Managers
Board of Parole Hearings
Page 2

Unit will be providing additional detailed implementation instructions to all case records offices.

Classification Committees

At the annual review, a second strike inmate who is within 12 months of his or her 50 percent time served date, or who has reached the calculated 50 percent time served date, shall be referred to BPH for parole consideration by the classification committee, unless the inmate is excluded based on the following criteria.

Exclusionary Criteria

1. The inmate is required to register pursuant to Penal Code Section 290 based on a current or prior sex offense conviction.
2. The inmate's current offense, whether controlling or non-controlling, is a violent offense pursuant to Penal Code Section 667.5(c).
3. The inmate is currently serving a Security Housing Unit (SHU) term, or the Institution Classification Committee (ICC) has assessed a SHU term for any Security Threat Group (STG) or disciplinary reason within five years of the date of the inmate's annual review. An inmate remains ineligible until five years after release from SHU or five years from the date of suspension or expiration date of the Minimum Earliest Release Date.
4. The inmate was found guilty of any serious Rules Violation Report (RVR) for a Division A-1 or Division A-2 offense as specified in California Code of Regulations (CCR), Title 15, Section 3323 (b) and (c) in the past five years. The inmate remains ineligible for five years from the date of the last RVR.
5. The inmate has been placed in Work Group C as specified in CCR, Title 15, Section 3043.4 during the prior year. The inmate remains ineligible for one year from the date removed from Work Group C.
6. The inmate has been found guilty of two or more serious RVRs in the past year. The inmate is ineligible for one year from the date of the last RVR.
7. The inmate has been found guilty of a drug-related offense as specified in CCR, Title 15, Section 3016 or refused to provide a urine sample as specified in CCR, Title 15, Section 3290 (d) in the past year. The inmate is ineligible for one year from the date of the last drug related RVR or refusal.

Associate Directors, Division of Adult Institutions
Wardens
Classification and Parole Representatives
Case Records Managers
Board of Parole Hearings
Page 3

8. The inmate has been found guilty of any RVR in which a STG nexus was found in the past year. The inmate is ineligible for one year from the date of the RVR.

9. The inmate's EPRD is within 180 days of the inmates' 50 percent time served date.

If a second strike inmate is not excluded based on the criteria listed above, the classification committee shall refer the inmate to BPH. The reasons for the referral shall be clearly articulated on a Classification Committee Chrono in SOMS and shall clearly indicate the inmate's 50 percent time served date. Committee will create a case note in SOMS indicating the case is referred to BPH. Additionally, following Classification Committee the assigned Correctional Counselor shall start the Mentally Disordered Offender referral process, if applicable, and complete the Release Program Study, CDCR Form 611 and Notice of Conditions of Parole, CDCR Form 1515 or Notice of Conditions of Post Release Community Supervision, CDCR Form 1515-CS, and any applicable registration notifications. The counselor shall clearly indicate on the CDCR Form 611, at the top, right-hand corner of the form, "NVSS" with the calculated 50 percent date.

If a second strike inmate is excluded based on the criteria listed above, then the committee shall not refer the case to BPH. The committee shall clearly articulate in SOMS Classification Committee Chrono the reason the inmate was not referred and create a case note indicating the case was not referred to BPH. The inmate may appeal the committee's decision pursuant to CCR, Title 15, Section 3084. Any non-violent second strike inmate who is denied a referral shall be reviewed again at the inmate's next scheduled annual review, unless number 1 or 2 of the exclusionary criteria apply. Additionally, inmates in Administrative Segregation Unit or SHU at the time of their annual review shall also be considered by the ICC for referral to BPH for parole consideration, if eligible.

Notification to the Parole Planning and Placement (PPP) Staff

Case Records staff shall immediately provide PPP staff with a copy of the CDCR Form 611 for all inmates who are referred to BPH for parole consideration as a NVSS. PPP institutional staff shall complete the appropriate Re-entry and Case Planning Assessments prior to the inmate's release.

BPH Review

Once an inmate is referred to BPH for parole consideration, the Board will render its decision within 50 days from the date the case is referred to the Board, unless the inmate has not yet served 50 percent of his or her sentence, in which case, the Board will render a decision once the inmate is within 60 days of serving 50 percent of his or her sentence. In addition, BPH staff will notify (1) the prosecutor(s) from the inmate's county/counties of commitment, and (2) any victims registered with the Office of Victim and Survivor Rights

Associate Directors, Division of Adult Institutions
Wardens
Classification and Parole Representatives
Case Records Managers
Board of Parole Hearings
Page 4

and Services within five days of receiving the referral. The BPH will provide prosecutors and registered victims 30 days to submit a written statement concerning the inmate's potential eligibility for parole. Once the 30-day period has passed, a BPH hearing officer will review all relevant and reliable information, including any written statements received from prosecutors and victims, and approve or deny the inmate's release. Once a decision is rendered, it will be entered into the Lifer Scheduling and Tracking System (LSTS) and displayed on the Case Records workload screen in LSTS for the appropriate institution.

Upon notice of the BPH decision, the case records staff will print the decision from LSTS and scan the document into ERMS. Case Records shall provide a copy of the BPH NVSS decision form to the inmate via the assigned Correctional Counselor I. The CCRA will enter the required case note into SOMS reflecting the decision by BPH. Case Records must ensure all required victim/county notifications are completed for inmates approved for release.

An inmate who is approved for release by BPH shall be released to State parole or Post Release Community Supervision as required by statute, no later than 50 days after the BPH decision unless the release decision is vacated by BPH before the inmate is released. Inmates shall not be released prior to his or her 50 percent date as calculated by Case Records.

Changes in Case Factors after Committee/BPH

A second strike inmate initially approved by a classification committee and referred to BPH for parole consideration, shall be returned to classification committee if his or her case factors change such that his or her referral for release is no longer appropriate. The classification committee shall reconvene as soon as practical and determine if the referral should be rescinded.

When pending RVRs, CDCR Form 804s, are received in the Case Records office, the Case Records Technician (CRT) will follow the current procedures, (i.e., date stamp, verify release date, log). Once the CRT scans the CDCR Form 804 into the alert section of ERMS, the CRT shall also review the alert section for the NVSS alert. If the NVSS alert exists, the CRT shall print and attach the alert to the CDCR Form 804 and give it to the Classification & Parole Representative (C&PR) or designee for review and/or processing.


The C&PR will review the pending CDCR Form 804 and the inmate's file to determine if the inmate has been referred to BPH. If the inmate has been referred to BPH, the C&PR will determine if the inmate will meet the exclusionary criteria if found guilty of the pending RVR. If the exclusionary criteria are met, the C&PR will notify the inmate's assigned counselor and the assigned counselor's supervisor of the pending RVR and have the inmate scheduled for committee to determine if BPH referral remains appropriate. If the


Associate Directors, Division of Adult Institutions
Wardens
Classification and Parole Representatives
Case Records Managers
Board of Parole Hearings
Page 5

referral is no longer appropriate, the committee will enter a case note in SOMS indicating the prior referral to BPH is rescinded. If the referral is still appropriate, there is no need to enter a new case note into SOMS.

In addition, the C&PR will notify BPH via email of the pending disciplinary action, and a copy of the CDCR Form 804 and pending RVR are available in SOMS. The email will briefly explain the case is pending committee review of the pending RVR and the appropriateness of the referral to BPH. The C&PR will also ensure BPH is notified of ALL CDCR Form 804s and pending RVRs, regardless of whether it will or will not result in the inmate meeting the exclusionary criteria. The C&PR must ensure BPH is notified the same day for any pending RVRs, especially when the inmate who received the RVR has already been reviewed by BPH and approved for release. The email address at which BPH is to be notified is BPHNVSS@CDCR.CA.GOV.

If you have any questions concerning the Classification processes described within this memorandum, please contact Kevin Ormand, Captain, Classification Services Unit, at (916) 327-4816, or via email at Michael.Ormand@cdcr.ca.gov. For Case Records questions, please contact Jill Johnston, Case Records Administrator, Case Records Unit, at (916) 323-7401, or via email at Jill.Johnston@cdcr.ca.gov. For questions about the BPH process, please contact Dan Moeller, Associate Chief Deputy Commissioner at (916) 445-4490, or via email at Daniel.Moeller@cdcr.ca.gov.


M. D. STAINER
Director
Division of Adult Institutions


JENNIFER SHAFFER
Executive Officer
Board of Parole Hearings

cc: Kelly Harrington
Kathleen Allison
Vincent Cullen
Becky Alkire
Deloris Pascal
Michael Ormand
Jill Johnston
Rhonda Skipper-Dotta
Howard Moseley
James Robertson

Exhibit D

1 XAVIER BECERRA
Attorney General of California
2 WILLIAM C. KWONG
Acting Senior Assistant Attorney General
3 JAY C. RUSSELL
DANIELLE F. O'BANNON
4 Supervising Deputy Attorneys General
MANEESH SHARMA, State Bar No. 280084
5 Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
6 San Francisco, CA 94102-7004
Telephone: (415) 703-5553
7 Fax: (415) 703-1234
E-mail: maneesh.sharma@doj.ca.gov
8 *Attorneys for Defendants*

Hanson Bridgett LLP
PAUL B. MELLO, State Bar No. 179755
SAMANTHA D. WOLFF, State Bar No. 240280
425 Market Street, 26th Floor
San Francisco, California 94105
Telephone: (415) 777-3200
Fax: (415) 541-9366
E-mail: pmello@hansonbridgett.com

9
10 IN THE UNITED STATES DISTRICT COURTS
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
12 AND THE NORTHERN DISTRICT OF CALIFORNIA
13 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
14 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

15 **RALPH COLEMAN, et al.,**
16 Plaintiffs,
17 v.
18 **EDMUND G. BROWN JR., et al.,**
19 Defendants.
20

2:90-cv-00520 KJM-DB
THREE-JUDGE COURT

21 **MARCIANO PLATA, et al.,**
22 Plaintiffs,
23 v.
24 **EDMUND G. BROWN JR., et al.,**
25 Defendants.
26

C01-1351 the
THREE-JUDGE COURT
**STIPULATION AND [PROPOSED]
ORDER REGARDING MODIFICATION
OF FEBRUARY 10, 2014 ORDER**

STIPULATION

1
2 On November 8, 2016, The Public Safety and Rehabilitation Act (the Act) of 2016 was
3 passed by the voters. (ECF No. 2931-2/5576-2.) The Act amends the California Constitution and
4 grants broad authority to the California Department of Corrections and Rehabilitation (the
5 Department) to promulgate regulations that (1) establish a parole consideration process for
6 nonviolent offenders who have served the full term for their primary criminal offense in state
7 prison, and (2) award credits earned for good conduct and approved rehabilitative or educational
8 achievements. (*Id.*) The Act also amends state law to require judges, rather than prosecutors, to
9 determine whether juveniles charged with certain crimes should be tried in juvenile or adult court.
10 (*Id.*)

11 On April 13, 2017, the Office of Administrative Law approved the Department's
12 emergency regulations. (*See* https://oal.blogs.ca.gov/files/2017/04/2017-0324-01EON_App.pdf.)
13 This emergency regulatory action expires September 21, 2017, with the Department required to
14 provide a certificate of compliance regarding public notice and comment, and consideration of
15 those comments – necessary for regulations to continue – by September 20, 2017. (*Id.*) The
16 Department may seek up to two readoptions of the emergency regulations, each for a period not
17 to exceed 90 days. (Cal. Penal Code § 5058.3(a)(2); Cal. Gov't Code § 11346.1(h).)

18 The emergency regulations establish a nonviolent parole process. Eligibility screening
19 under the new process will begin June 1, 2017, and the Board of Parole Hearings (the Board) will
20 begin reviewing inmates referred for parole consideration on July 1, 2017. (Cal. Code Regs. tit.
21 15, § 3492.)

22 This new process mirrors the existing court-ordered nonviolent second-strike parole
23 process. Specifically, the nonviolent parole process established by regulation will utilize the
24 same public safety screening criteria and notification procedures for registered victims and
25 prosecuting agencies that the Department and the Board currently employ for the court-ordered
26 parole process. (*Id.* at § 3492(b).) The Board will review all relevant evidence and apply the
27 same legal standard for reviewing an inmate's suitability for release under the nonviolent parole
28 process as it applies under the court-ordered parole process. (*Id.* at § 2449.4(b), (c).) Inmates

1 who are screened from parole consideration under the public safety screens or denied parole by
2 the Board will be screened again for referral to the Board the following year. (*Id.* at § 3492(d)).
3 Inmates may administratively appeal an initial eligibility or screening determination. (*Id.* at §§
4 3491(e), 3492(f).) Inmates can also request review of the Board's parole decision. (*Id.* § 2449.5.)
5 If requested, the Board will within 30 days have a hearing officer not involved in the original
6 decision review it and issue a decision in writing, either concurring with the original decision or
7 vacating the original decision and issuing a new written decision with a statement of reasons.
8 (*Id.*)

9 The nonviolent parole process differs from the court-ordered parole process in certain
10 respects. First, the regulations authorize parole consideration for a broader category of inmates.
11 Nonviolent parole consideration under the Act encompasses all nonviolent second strike
12 offenders currently eligible for parole consideration under the court order, but also extends to
13 other nonviolent offenders whose sentences were not enhanced by a second strike. (*See eligibility*
14 *criteria at §§ 3490 and 2449.1.*)

15 Second, the nonviolent parole process changes the date of eligibility for parole
16 consideration. The court-ordered process establishes parole consideration after an inmate has
17 served 50 percent of their total sentence (including sentences lengthened by sentencing
18 enhancements or consecutive sentences). (*See ECF No. 2826-1/5246-1 at 3.*) Under the Act,
19 nonviolent offenders are eligible for parole consideration after completing the full term for their
20 primary offense. (Cal. Code. Regs., tit. 15 § 3490(f).) The full term of an inmate's primary
21 offense is defined as the longest term of imprisonment imposed by the court for any offense,
22 excluding the imposition of an enhancement, consecutive sentence, or alternative sentence. (*Id.* at
23 § 3490(d) & (e).) Incoming inmates will be notified of their eligibility for this parole process and
24 be given an overview of the process upon admission to the Department. (*Id.* at § 3491(b).)
25 Finally, under the Act, the public screening criteria will be applied automatically and
26 electronically, whereas the court-ordered process relies on the criteria being manually applied at
27 the inmate's annual classification committee, the timing of which can affect when an inmate is
28 referred to the Board.

1 The nonviolent parole process eliminates the need for the Court's state law waivers
2 authorizing the nonviolent second-strike parole process. Because the nonviolent parole and court-
3 ordered parole process use nearly identical criteria for eligibility, referral, and determination, but
4 differ in terms of when and how an inmate is referred to the Board, maintaining both processes
5 will result in a significant duplication of work and resources by the Board and the Department.
6 Requiring multiple screening, notifications, and parole proceedings would also lead to significant
7 confusion for staff, victims, and inmates. Accordingly, the parties have met and conferred and
8 stipulate to the following:

9 1. The nonviolent parole process will go into effect on July 1, 2017. Defendants will
10 stop referring inmates to the Board for the court-ordered parole process on June 30, 2017. Any
11 inmates who have been referred to the Board for parole consideration under the court-ordered
12 process on or before June 30, 2017, will be reviewed under the court-ordered parole process. If
13 they are not approved for release as a result of a referral made on or before June 30, 2017, they
14 will be considered for referral under the nonviolent parole process one year later and annually
15 thereafter.

16 2. Defendants will report to the Court regarding the status of the nonviolent second
17 strike parole measure and will report when the Board processes all referrals received before July
18 1, 2017 under the court-ordered parole process. The parties agree that at that time Defendants
19 will have complied in full with paragraph 4(b) of the Court's February 10, 2014 Order, and that
20 section of the order shall be vacated. Defendants by the present Stipulation shall implement the
21 nonviolent parole process described here and report to the Court monthly regarding the status of
22 that measure, including number of inmates referred to the Board and the number of inmates
23 approved for release, and any substantive changes resulting from regulatory or other State
24 proceedings. The remaining provisions of the Court's February 10, 2014 Order, as modified by
25 the November 19, 2014 and March 4, 2016 Orders, including any applicable waivers of state law,
26 are unchanged by this stipulation and order.

27 ///

28 ///

1 Dated: __ June 6, 2017

XAVIER BECERRA
Attorney General of California

2
3 By: /s/ *Maneesh Sharma*
MANEESH SHARMA
Deputy Attorney General
Attorneys for Defendants

4
5 Dated: __ June 6, 2017

HANSON BRIDGETT LLP

6
7 By: /s/ *Paul B. Mello*
PAUL B. MELLO
Attorneys for Defendants

8
9 Dated: __ June 6, 2017

PRISON LAW OFFICE

10 By: /s/ *Don Specter* _____
DON SPECTER
Attorneys for Plaintiffs

11
12 Dated: __ June 6, 2017

ROSEN, BIEN, GALVAN, & GRUNFELD LLP

13 By: /s/ *Michael Bien* _____
MICHAEL BIEN
Attorneys for Plaintiffs

14
15 **[PROPOSED] ORDER**

16 Pursuant to the foregoing stipulation, IT IS SO ORDERED.

17
18 Dated: _____, 2017

19 _____
STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

20
21
22 Dated: _____, 2017

23 _____
THELTON E. HENDERSON
SENIOR UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

24
25
26 Dated: _____, 2017

27 _____
KIMBERLY J. MUELLER
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF CALIFORNIA

Exhibit E

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

RALPH COLEMAN, et al.,
Plaintiffs,

v.

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

Case No. 2:90-cv-0520 KJM DB P

THREE-JUDGE COURT

MARCIANO PLATA, et al.,
Plaintiff,

v.

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

Case No. 01-cv-01351-TEH

THREE-JUDGE COURT

**ORDER SUSPENDING PARAGRAPH
4(B) OF FEBRUARY 10, 2014 ORDER**

The court has reviewed the parties' June 6, 2017 stipulation and proposed order to modify the court's February 10, 2014 order based on emergency regulations establishing a nonviolent offender parole process.¹ The court agrees that it would be wise to avoid duplication of effort between the newly adopted process and the court-ordered parole process for nonviolent second-strike offenders, but it disagrees that vacating the court-ordered parole process is appropriate before permanent regulations are adopted.

¹ The parties' stipulation refers to a "nonviolent parole process." While any parole process should, of course, be nonviolent, the word "nonviolent" more appropriately modifies "offender" in this context.

1 Accordingly, pursuant to the parties' stipulation as modified, IT IS HEREBY
2 ORDERED that:

3 1. The nonviolent offender parole process will go into effect on July 1, 2017.
4 Defendants will stop referring inmates to the Board of Parole Hearings ("Board") for the
5 court-ordered parole process on June 30, 2017. Any inmates who have been referred to the
6 Board for parole consideration under the court-ordered process on or before June 30, 2017,
7 will be reviewed under the court-ordered parole process. If they are not approved for
8 release as a result of a referral made on or before June 30, 2017, they will be considered
9 for referral under the nonviolent offender parole process one year later and annually
10 thereafter.

11 2. Defendants will continue to report to the court regarding the status of the
12 court-ordered nonviolent second-strike offender parole measure and will report when the
13 Board processes all referrals received before July 1, 2017, under that process. The parties
14 agree that, at that time, defendants will have complied in full with paragraph 4(b) of the
15 court's February 10, 2014 Order, and that section of the order shall then be suspended.


16 3. Defendants shall implement the nonviolent offender parole process described
17 in the parties' June 6, 2017 stipulation. They shall include in their monthly reports the
18 status of that measure, including the number of inmates referred to the Board, the number
19 of inmates approved for release, and any substantive changes resulting from regulatory or
20 other State proceedings. Defendants shall also report to the court when permanent
21 regulations concerning the nonviolent offender parole process have been adopted. At that
22 time, the court will entertain a revised stipulation to vacate paragraph 4(b) of the
23 February 10, 2014 Order.

24 //
25 //
26 //
27 //
28 //


1 4. The remaining provisions of the court's February 10, 2014 Order, as
2 modified by the November 14, 2014, December 19, 2014, and March 4, 2016 orders,
3 including any applicable waivers of state law, are unchanged.²
4

5 **IT IS SO ORDERED.**


6
7 Dated: 06/20/17


STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

8
9
10
11 Dated: 06/20/17


THELTON E. HENDERSON
SENIOR UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

12
13
14
15 Dated: 06/20/17


KIMBERLY J. MUELLER
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF CALIFORNIA

16
17
18
19
20
21
22
23
24
25
26
27
28 ² The parties included the incorrect date – November 19, 2014 – for one of the orders and did not include the December 19, 2014 order, which the court entered pursuant to the parties' stipulation.

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **In re Gregory Gadlin**

No.:

S254599

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On August 13, 2019, I electronically served the attached

**MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF CHARLES CHUNG**

by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on August 13, 2019, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Michael Satris
satrislaw.eservice@gmail.com
Attorney for Petitioner Gregory Gadlin
Served via TrueFiling

California Appellate Project – LA
capdocs@lacap.com
Served via email

Sherri R. Carter, Clerk of the Court
Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: The Honorable William C. Ryan, Judge
Served via U.S. Mail

Second Appellate District, Division Five
Court of Appeal of the State of California
2d1.clerk5@jud.ca.gov
Served via email

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 13, 2019, at Los Angeles, California.

S. Figueroa

Declarant

Signature

In the Supreme Court of the State of California

In re

**GREGORY GADLIN,
On Habeas Corpus.**

Case No. S254599

Court of Appeal, Second Appellate District, Case No. B289852
Los Angeles County Superior Court, Case No. BA165439
The Honorable William C. Ryan, Judge

**[PROPOSED] ORDER GRANTING RESPONDENT'S
MOTION FOR JUDICIAL NOTICE**

XAVIER BECERRA
Attorney General of California
PHILLIP J. LINDSAY
Senior Assistant Attorney General
AMANDA J. MURRAY
Supervising Deputy Attorney General
*CHARLES CHUNG
Deputy Attorney General
State Bar No. 248806
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6026
Fax: (916) 731-2147
Email: DocketingLAAWT@doj.ca.gov
Charles.Chung@doj.ca.gov
Attorneys for Respondent

The Court, having read and considered respondent California Department of Corrections and Rehabilitation's Motion for Judicial Notice, and good cause appearing, HEREBY ORDERS that the Motion for Judicial Notice is GRANTED. The Court takes judicial notice of Exhibits A, B, C, D, and E attached to respondent's Motion for Judicial Notice.

Dated: _____

Chief Justice Tani Cantil-Sakauye

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **In re Gregory Gadlin**

No.:

S254599

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On August 13, 2019, I electronically served the attached

[PROPOSED] ORDER GRANTING RESPONDENT'S MOTION FOR JUDICIAL NOTICE

by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on August 13, 2019, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Michael Sattris
sattrislaw.eservice@gmail.com
Attorney for Petitioner Gregory Gadlin
Served via TrueFiling

California Appellate Project – LA
capdocs@lacap.com
Served via email

Sherri R. Carter, Clerk of the Court
Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: The Honorable William C. Ryan, Judge
Served via U.S. Mail

Second Appellate District, Division Five
Court of Appeal of the State of California
2d1.clerk5@jud.ca.gov
Served via email

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 13, 2019, at Los Angeles, California.

S. Figueroa

Declarant

Signature