



1 its Eighth Amendment obligation to the plaintiff class, this court, as well as a three-judge district  
2 court and the United States Supreme Court, have confirmed there are ongoing constitutional  
3 violations in the delivery of mental health care to these incarcerated persons. The state repeatedly  
4 has fallen short of its constitutional obligations in a number of critical areas: suicide prevention;  
5 the treatment of mentally ill inmates in administrative segregation; those inmates' access to  
6 higher levels of care, including mental health crisis beds; and staffing. *See, e.g.*, July 23, 2007  
7 Order, ECF No. 2320; *Coleman v. Brown*, 938 F. Supp. 2d 955, 973-89 (E.D. Cal. 2013); *see*  
8 *also, e.g.*, *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 888, 919, 929-30, 948, 955-56; *Brown*  
9 *v. Plata*, 563 U.S. 493, 503-04, 519, 523 (2011). The state also has lagged in developing the tools  
10 that would allow its own monitoring of prison mental health care again, as well as in fixing the  
11 data systems required for accurate monitoring. *See, e.g.*, Sept. 30, 2020 Order, ECF No. 6846;  
12 *Coleman v. Newsom*, 424 F. Supp. 3d 925 (E.D. Cal. 2019).

13 At this point, two ongoing serious violations stand out and prompt the court's issuance of  
14 this order inviting the United States Attorney General to once again participate in this case.

15 First is staffing. Defendants have not, in more than twenty-five years, achieved  
16 constitutionally adequate mental health staffing levels. Today, more than 32,000 inmates with  
17 serious mental disorders live in California's prisons, and they account for more than a third of the  
18 state's total inmate population. *See* Appendix A to this order, Mental Health Services Delivery  
19 System (MHSDS) Management Information Summary (MIS) Report dated December 19, 2022  
20 (total census for CDCR MHSDS is 32,544); *cf.* ECF No. 7683 at 2. Faced with the persistently  
21 high population of mentally ill incarcerated persons, the state has failed to staff its prisons with  
22 the number of mental health professionals required to provide class members constitutionally  
23 adequate care. *See, e.g.*, June 13, 2002 Order, ECF No. 1383 (requiring defendants to limit to ten  
24 percent the vacancy rate among psychiatrists and case managers). By 2009, defendants produced  
25 a staffing plan that, if implemented, would have brought the state into compliance. *See* Oct. 10,  
26 2017 Order, ECF No. 5711, at 11. But by 2017, eight years later, the state had not yet fully  
27 implemented its plan, nor had it complied with the court's order issued in August 2016 to provide  
28 a "measurable timeline" for achievement of constitutionally adequate staffing levels. *Id.* at, *e.g.*,

1 11. The court therefore gave defendants one year to “take all steps necessary to come into  
2 complete compliance with” their staffing plan and the ten percent vacancy rate. *Id.* at 30. The  
3 state again fell short. Today, more than four years later, defendants still have not complied. *See*  
4 ECF Nos. 7674, 7677.

5 Second is suicide prevention. Total inmate suicides in California have ranged from a low  
6 of 15 in 2000 and 2021 to a high of 43 in 2005 and 2006; the total reached 38 as recently as 2019.  
7 In 2019, and the two preceding years, California’s inmate suicide rate was the “4th highest out of  
8 the ten largest correctional systems in the United States.” *See* ECF No. 7239 at 12. In February  
9 2015, the court ordered defendants to adopt a series of recommendations provided by the Special  
10 Master’s court-approved expert, Lindsay Hayes, M.S. Feb. 3, 2015 Order, ECF No. 5271.  
11 Defendants did not object to any of Mr. Hayes’ recommendations. *Id.* at 2. Despite a series of  
12 court orders to implement the recommendations, fifteen of twenty-nine remain outstanding. *See*  
13 Jan. 6, 2023 Order, ECF No. 7696 (adopting certain of the Special Master’s most recent  
14 recommendations and setting status to review state’s failure to comply).

15 Staffing and suicide prevention are but two examples of the unacceptable delays in  
16 achieving constitutional compliance in this case. As a result, the court is at a critical crossroads.  
17 The plaintiff class has waited far too long for constitutionally adequate mental health care, and  
18 serious enforcement action on a number of fronts is past due. At the same time, the court  
19 recognizes enforcement proceedings likely will further delay this case and frustrate its  
20 fundamental purpose of ensuring constitutionally adequate care now for California’s incarcerated  
21 mentally ill. Further delay is particularly likely given that the state has adopted a distracting and  
22 costly scorched-earth litigation strategy, prosecuting more than a dozen appeals and mandamus  
23 petitions within the last five years alone, none successful.<sup>2</sup> During this same time period, the

---

<sup>2</sup> *See* Order, *Coleman v. Newsom*, No. 22-15570 (9th Cir. filed Aug. 17, 2022), Dkt. No. 7 (voluntarily dismissed); Order, *Coleman v. Newsom*, No. 22-15369 (9th Cir. filed Oct. 12, 2022), Dkt. No. 12 (dismissed on defendants’ motion); Order, *Coleman v. Newsom*, No. 22-15065 (9th Cir. filed Feb. 28, 2022), Dkt. No. 8 (voluntarily dismissed); Order, *Coleman v. Newsom*, No. 21-16884 (9th Cir. filed Oct. 12, 2022), Dkt. No. 19 (dismissed on defendants’ motion); Order, *Coleman v. Newsom*, No. 21-15039 (9th Cir. filed May 17, 2021), Dkt. No. 17 (dismissed on stipulation for voluntary dismissal); Order, *Coleman v. Newsom*, No. 20-16734 (9th Cir. filed Oct. 5, 2022), Dkt. No. 83-1 (dismissed as moot); Order, *Coleman v. Newsom*, No. 20-16062 (9th

1 court has found the state to have engaged in knowing presentation of misleading evidence to the  
2 court and its Special Master. *See Coleman v. Newsom*, 424 F. Supp. 3d at, e.g., 952. While  
3 contributing to delay, the state’s litigation strategy also appears to have substantially interfered  
4 with the dedicated efforts of many within CDCR itself—from the Secretary to mental health  
5 administrators to clinicians—to remedy constitutional violations in good faith. It also appears to  
6 have blocked the possibility of further court-convened settlement efforts. *See Reporter’s*  
7 *Transcript of Proceedings (RT 4/22/22)*, ECF No. 7540, at 50-53.

8 The ultimate resolution of this case implicates the interests of the United States. As it  
9 previously has informed the court, the United States has a “broad interest in ensuring that  
10 conditions of confinement in state . . . correctional facilities are consistent with the Constitution  
11 and federal law.” Statement of Interest of the United States of America, ECF No. 4736, at 2; *see*  
12 *also* 28 U.S.C. § 517.<sup>3</sup> In other comparable circumstances, the United States has participated in  
13 an action to “encourag[e] state officials to take action to safeguard the rights” of incarcerated  
14 persons and to “ensur[e] ‘conservation of judicial resources.’” *Ruiz v. Estelle*, 679 F.2d 1115,  
15 1135-36 (considering, among other things, application of 42 U.S.C. § 1997 *et seq.* to prison  
16 conditions case), *amended in part, vacated in part on other grounds*, 688 F.2d 266 (5th Cir.  
17 1982).

18 ////

---

Cir. filed Oct. 9, 2022), Dkt. No. 11 (dismissed on defendants’ unopposed motion); Order, *In re: Gavin Newsom*, No. 19-71493 (9th Cir. June 19, 2019), Dkt. No. 8 (petition for writ of mandamus denied); Order, *Coleman v. Newsom*, No. 19-15006 (9th Cir. Jan. 4, 2020), Dkt. No. 35 (voluntarily dismissed); Order, *In re: Edmund G. Brown, Jr.*, No. 18-72816 (9th Cir. Oct. 18, 2018), Dkt. No. 5 (petition voluntarily withdrawn); Order, *Coleman v. Newsom*, No. 18-16445 (9th Cir. Dec. 24, 2019), Dkt. No. 45-1 (dismissed for lack of jurisdiction); Orders, *Coleman v. Brown*, No. 17-17328 (9th Cir. Nov. 28, 2018), Dkt. No. 50 (orders affirmed), (9th Cir. Dec. 31, 2018), Dkt. No. 54 (motion to stay mandate for 90 days or until final disposition by U.S. Supreme Court granted) & (9th Cir. Feb. 14, 2019), Dkt. No. 56 (motion to lift stay of mandate granted); Order, *Coleman v. Brown*, No. 17-16080 (9th Cir. Nov. 28, 2018), Dkt. No. 70-1 (dismissed for lack of jurisdiction).

<sup>3</sup> Section 517 provides: “The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

1 For these reasons, the court invites the United States Attorney General to advise the court  
2 whether he will participate in this action until its conclusion, assuming the role of *amicus* at a  
3 minimum. In particular, the court invites the Attorney General to address two of the most  
4 pressing issues identified above by providing:

5 (1) The United States' position on resolving California's longstanding staffing  
6 shortfalls. *See, e.g.*, Oct. 10, 2017 Order, ECF No. 5711, at 30; ECF Nos. 7674,  
7 7677.

8 (2) The United States' position on the state's failures to comply with court-ordered  
9 suicide prevention measures. *See* Feb. 3, 2015 Order, ECF No. 5271; Jan. 6, 2023  
10 Order, ECF No. 7696.

11 The Attorney General is welcome to address any other issue the court has identified in this order,  
12 or otherwise implicated by this case.

13 In accordance with the above, IT IS HEREBY ORDERED that:

14 1. The Clerk of the Court is directed to serve a copy of this order on Phillip A. Talbert,  
15 United States Attorney for the Eastern District of California, and David Shelledy, Chief, Civil  
16 Division, United States Attorney's Office for the Eastern District of California, with the request  
17 that they promptly provide a copy of this order to the United States Attorney General.

18 2. The court requests a response from the United States Attorney General within thirty  
19 days from the date of this order.

20 3. The United States Attorney General is informed the court will hold a status conference  
21 in this matter on **February 10, 2023 at 10 a.m.** in the event he wishes to attend or send a  
22 representative to observe or speak on his behalf.

23 DATED: January 6, 2023.

24   
CHIEF UNITED STATES DISTRICT JUDGE

Level of Care	Housing Program	MALES			FEMALES		
		Capacity	Census <sup>1</sup>	Awaiting Placement <sup>2</sup>	Capacity	Census <sup>1</sup>	Awaiting Placement <sup>2</sup>
<b>Correctional Clinical Case Management System (CCCMS)</b>		<b>26,500</b>	<b>22,813</b>		<b>2,250</b>	<b>1,697</b>	
CCCMS	Reception Center (RC)		2,091			152	
	General Population (GP)		19,094			1,459	
	Enhanced Outpatient Program (EOP)		50			3	
	Mental Health Crisis Bed (MHCB)		2			1	
	Psychiatric Inpatient Program (PIP)		0			0	
	Specialized Medical Beds Housing		474			20	
	Administrative Segregation Unit (ASU)		260			46	
	Condemned		115			9	
	Long Term Restricted Housing Unit (LTRH) <sup>6</sup>	270	104			0	
	Non-Disciplinary Segregation (NDS)		0			0	
	Psychiatric Services Unit (PSU)		1			0	
	Security Housing Unit (SHU)		0			7	
Short Term Restricted Housing Unit (STRH) <sup>6</sup>	1,125	622			0		
<b>Enhanced Outpatient Program (EOP)</b>		<b>6,465</b>	<b>6,622</b>		<b>225</b>	<b>155</b>	
EOP	Reception Center (RC)		188			0	
	General Population (GP)		235			29	
	Enhanced Outpatient Program (EOP)	5,708	5,180		195	107	
	Mental Health Crisis Bed (MHCB)		15			0	
	Psychiatric Inpatient Program (PIP)		15			0	
	Specialized Medical Beds Housing		252			1	
	Administrative Segregation Unit (ASU)	585	476	42	20	11	0
	Condemned		67			0	
	Long Term Restricted Housing Unit (LTRH)		0			0	
	Non-Disciplinary Segregation (NDS)		4			0	
	Psychiatric Services Unit (PSU)	172	156	16	10	7	2
	Security Housing Unit (SHU)		0			0	
Short Term Restricted Housing Unit (STRH)		34			0		
Level of Care		Capacity	Census <sup>1</sup>	Awaiting Placement <sup>2</sup>	Capacity	Census <sup>1</sup>	Awaiting Placement <sup>2</sup>
<b>Mental Health Crisis Bed (MHCB)<sup>7</sup></b>		<b>377</b>	<b>196</b>	<b>17</b>	<b>41</b>	<b>12</b>	<b>0</b>
<b>Psychiatric Inpatient Programs:</b>							
<b>Intermediate Care Facility (ICF)</b>		<b>1,061</b>	<b>700</b>	<b>85</b>			
<b>Low Custody</b>		<b>370</b>	<b>122</b>	<b>10</b>			
	<i>Atascadero State Hospital (ASH)</i>	256	65	4			
	<i>Coalinga State Hospital (CSH)</i>	50	26	1			
	<i>California Medical Facility (CMF)</i>	64	31	5			
<b>High Custody</b>		<b>691</b>	<b>578</b>	<b>75</b>			
	<i>California Health Care Facility (CHCF)</i>	331	261	32			
	<i>CMF Single Cells</i>	94	65	10			
	<i>CMF Multi Cells</i>	20	18	10			
	<i>SVPP Single Cells<sup>8</sup></i>	202	195	17			
	<i>Salinas Valley Psychiatric Program (SVPP) Multi Cells<sup>8</sup></i>	44	39	6			
<b>Acute Psychiatric Program (APP)</b>		<b>419</b>	<b>274</b>	<b>8</b>			
	CHCF	201	87	2			
	CMF	218	187	6			
<b>Psychiatric Inpatient Program (PIP)</b>		<b>52</b>	<b>40</b>	<b>2</b>	<b>75</b>	<b>35</b>	<b>0</b>
	California Institution for Women (CIW)				45	31	0
	Patton State Hospital (PSH)				30	4	0
	SQ	40	16	0			
	SQ (Non-condemned)	0	15	1			
	MH Flex Institution(s)/Program(s) <sup>7</sup>	12	9	1			
<b>Penal Code 2974s (Parolees)<sup>5</sup></b>			<b>1</b>				
	Metro State Hospital (MSH)		0				
	Napa State Hospital (NSH)		1				
	Patton State Hospital (PSH)		0				
<b>TOTALS (excluding Parolees)</b>		<b>34,874</b>	<b>30,645</b>	<b>170</b>	<b>2,591</b>	<b>1,899</b>	<b>2</b>
		<b>Total Capacity</b>	<b>Total Census<sup>1</sup></b>	<b>Total Awaiting Placement<sup>2</sup></b>	<b>Total Over Timeframes<sup>3</sup></b>	<b>CENSUS PERCENTAGES</b>	
						<b>% MHSDS</b>	<b>% CDCR<sup>4</sup></b>
	CCCMS	28,750	24,510			75.31%	25.58%
	EOP	5,903	6,089			18.71%	6.36%
	EOP-ASU/NDS/STRH	605	525	42	12	1.61%	0.55%
	EOP-PSU/LTRH/SHU	182	163	18	0	0.50%	0.17%
	MHCB	418	208	17	0	0.64%	0.22%
	PSYCHIATRIC INPATIENT	1,607	1,049	95	13	3.22%	1.09%
	<b>GRAND TOTAL</b>	<b>37,465</b>	<b>32,544</b>	<b>172</b>	<b>25</b>	<b>100.00%</b>	<b>33.97%</b>

<sup>1</sup> Census sources: EDS for CCCMS, EOP; HEART for MHCB; RIPA reports for ICF, APP, and PIP programs.

<sup>2</sup> **Awaiting Placement** = The sum of inmates waiting to be placed in a bed at a specific level of care. Those awaiting placement to ICF, APP, and PIP include referrals that have been custodially reviewed by HCPOP and are awaiting bed availability, inpatient program acceptance, or transfer to the inpatient program as of the reporting date (based on the Referrals to Inpatient Programs Application (RIPA)).

<sup>3</sup> **Total Over Timeframes** = The number of referrals that are beyond Mental Health Program Guide transfer timeframes: EOP-ASU includes cases in non-hubs waiting > 30 days, PSU includes cases with an original CSR endorsement date > 60 days, MHCB includes referrals > 24 hours, Psychiatric Inpatient includes Intermediate referrals > 30 days and Acute referrals > 10 days.

<sup>4</sup> CDCR pop as of 12/14/22 (OISB). Based on Total In-State Institution Population and Out of State (COCF).

<sup>5</sup> Census numbers are tracked and updated by Department of State Hospital (DSH).

<sup>6</sup> LTRH and STRH capacity numbers obtained from the PMU Weekly Population Summary Report dated March 6, 2020.

<sup>7</sup> MH beds flexed to Acute and/or ICF at institutions that do not have a PIP program.

<sup>8</sup> Census and Awaiting Placement counts include PC 1370 patients.