JONATHAN SIMON

California's New Carceral Logic

Health care, confinement, and the future of imprisonment

California's newest prison—the first one commissioned since the 1990s—is also the first in decades not to be called a prison.[1] The California Health Care Facility, Stockton (CHCF), opened in 2013 on the site of the former Karl Holton Youth Correctional Facility. Designed to hold 1,722 beds and now providing housing and treatment for 2,951 "inmate-patients," it houses the most medically and mentally challenged prisoners in the state. At 1.4 million square feet, the facility is one of the largest ever built. CHCF contains fifty-four buildings built on a single-story plan to house prisoners largely immobilized by severe long-term illnesses.

Correctional hospitals have been built before, but never has a facility of this scale been built for the highest level of medical-risk patients (as reports of the State's correctional healthcare Receiver terms them). The prison is essentially a massive intensive care unit with electrified fencing and formidable walls. No state has ever opened or operated a prison on this scale with the mission of handling such ill prisoners. Why would a state with such overcrowding problems and that has not built a new prison in more than a decade elect to spend so much money to house such delicate prisoners? In large part, the answer lies in the orders of the federal courts. Since 1995 and 2002, respectively, different federal courts in California have held the entire system to be violating the constitutional rights of prisoners by holding them in facilities that cannot assure adequate treatment for the serious medical and mental health problems that many of them bring with them to prison and others develop there. In 2005, the entire prison healthcare system was put under a court-appointed Receiver. One of the ways California has sought to comply with these court orders (so far unsuccessfully) is by building new medical and mental health facilities to which it can move the many prisoners with already identified serious problems. CHCF is the first of two giant prison hospital complexes to be opened in Stockton.

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Pelican Bay State Prison Secure Housing Unit. Photograph by California Department of Corrections and Rehabilitation.

The related reason is medical. These prisoners, the most vulnerable in the system, are the tip of an iceberg of chronic illness in California prisons. In California, a rapidly aging prison population is especially vulnerable to chronic illness, where approximately 40 percent of prisoners have one or more, a fraction consistent with nationwide estimates. For younger people, especially men of color or involved in gang-based crime, prison may have a positive influence on health by dramatically lowering their risk of being shot and by giving them exposure, sometimes for the first time in years, to some kind of healthcare system. As people age in prison, however, chronic illnesses such as diabetes, hepatitis, and cancer become more common, some a product of the lifestyles that often accompany criminalization such as drug addiction and high-risk sex. Even in prisons where healthcare meets the basic minimums considered constitutionally adequate, chronic illness is likely to worsen considerably through the routine nature of boredom and (paradoxically) stress, combined with a poor diet, and greatly aggravated by overcrowding. In California, where healthcare has been under court order as constitutionally substandard for nearly two decades, it is not surprising that the state has accumulated a large number of very sick people for which it has now created a kind of "supermax" for the at-risk prisoner.

The Stockton facility initially opened in July 2013, and almost immediately the State began moving in prisoners to relieve their continuing problems of overcrowding. Problems emerged almost immediately including at least one death where the bleeding prisoner died after staff took 30 to 60 minutes to respond to his emergency call from inside his cell. Lawyers for the prisoners found prisoners "confined to broken wheelchairs" and sitting in their own feces and urine. At another point, shortages of towels and soap temporarily halted showers for some prisoners. Officials blamed the inevitable gaffes on opening such a giant and complex facility, but CHCF has had more basic problems in more familiar tasks for prisons, like managing the supply chain and motivating staff to address an extremely needy prison population. In January, the court halted intake at the prison; in his February 2014 report, noting that the "need to

address issues impacting health care was, as a practical matter, being treated as a second class priority," the Receiver expressed dismay at the basic attitude of prison officials.[2]

Even with its flawed launch, the opening of Stockton's CHCF may mark the dawn of a new era in California prisons. Although considered by the State of California a specialized tool that will help it comply with court orders to provide a higher standard of care in both medical and mental health treatment, it also serves as a window into the changing vision of prisoners and of the correctional enterprise in a state that helped lead the move to mass incarceration a generation ago.

In this regard, it is interesting to compare this new vision for California prisons with a similarly paradigm-shifting prison—Pelican Bay State Prison and its notorious SHU (for security housing unit)[3] opened in 1989 as California approached the peak of its commitment to mass imprisonment. The two are as different as possible in their stated purposes and intended populations. Both share a common origin in the efforts of California's giant carceral State to shake itself free from the grip of persistent federal courts seeking to enforce constitutional rights for prisoners with a new kind of specialized prison that would service the larger prison system and make it more sustainable. In their differences, we can read some important developments in what we might call California's carceral geography.

Pelican Bay State Prison SHU

In the 1980s, as California began to develop a new archipelago of prisons to support its commitment to expanding incarceration, one particular new prison built on the remote northern coastline near Oregon emerged as a kind of model institution for the new way it had come to think about crime, prisoners, and punishment. Pelican Bay State Prison was named not for its location on an unnamed part of the coast, but as a nod to the infamous former federal prison in San Francisco Bay, Alcatraz, which housed the most dangerous prisoners in the federal system from the 1920s until the 1960s—prisoners including Al Capone. (Alcatraz means pelican in Spanish.)[4] In particular, a large part of the Pelican Bay prison was built as a "supermax unit," designed to hold prisoners in near total lockdown, with no programs, no contact with other prisoners, and no more than one hour a day out of their cell to shower or exercise in an open-air version of their cell.

If California's commitment to growing the prison system in the 1980s was rooted in the broad shifts in California governance from a high-investment New Deal liberal state to a low-taxes conservative state, and the politicized fear of crime in the Golden State, the Pelican Bay SHU was built on a very specific nightmare. In August 1971, during a sustained period of politically motivated conflict in California prisons that lasted several years, an uprising at San Quentin led by Black Panther leader and already-famed author George Jackson resulted in the murder of several correctional officers (as well as the death of Jackson who was shot in a hail of bullets as he attempted to escape). The uprising took place in the Adjustment Center, a unit at San Quentin then considered the most rigorous in the State and to be used on the most potentially violent and dangerous prisoners.

In all, a total of eight officers died that year. This upsurge in violence against guards (killings of correctional officers are extremely rare historically and became so once again a few years later) took place against a moment of racial conflict and revolutionary narratives inside prisons. California prisons were shifting to minority white, and the long legacy of Jim Crow racial norms, enforced by the guards, became a central focus for conflict inside the prison society. In the broader society, the struggle for equal citizenship for minorities, especially Blacks and Latinos in California, was taking on a more militant expression, especially after the assassination of Dr. Martin Luther King, Jr. For some on the radical left of the late 1960s, prisons appeared as the frontline of political struggle against a state that seemed to them overtly racist and fascistic, and prisoners like Jackson were the leading revolutionaries.[5] For conservatives, these events highlighted the severity of the danger posed by California prisoners and their peers in the community not yet imprisoned.

As California prison managers began to plan the many new prisons authorized by the legislature in the 1980s, the need for an extreme mechanism of control to prevent any future Adjustment Center like uprisings was given priority. The State had found itself in continuous litigation with prisoners, especially those who had survived the uprising and were being held under the most exacting controls (including shackling). If California was going to greatly increase the numbers of people in prison from the levels of the 1970s, it stood to reason that the number of extremely violent and dangerous prisoners would grow commensurately.

Pelican Bay State Prison Secure Housing Unit. Photograph by California Department of Corrections and Rehabilitation.

California officials ordered two massive supermax units—a brand-new SHU at Pelican Bay and a similarly sized SHU to be retrofit into an existing prison at Corcoran.

The levels of violence experienced in the 1970s never returned, despite rapid growth in the prison population and increasing overcrowding. The SHU at Pelican Bay became a segregation tool for prisoners believed to be active members of one of the racially defined prison gangs that had come to dominate prisoner society and public order maintenance inside prisons since the removal of parole incentives and programs back in the early 1980s. Instead of being sent to the SHU for particular acts of violence, gang members were sent there after a process of being "validated" as gang members by prison officials, and they remained there until they broke with the gang (provable only by informing on other gang members), reached the end of their sentence, or died.

The extreme conditions of confinement in the SHU and the frequent use of violent "cell extractions" to overcome prisoner resistance (manifest in acts like refusing to return a tray, since prisoners eat alone in their cells) soon came before the federal courts. In the landmark 1995 case *Madrid v. Gomez*,[6] Judge Thelton Henderson found that the cell extractions, and other routines of physical violence to establish order, violated the Eighth Amendment, and that holding prisoners already suffering from a mental illness under the psychologically destructive regime of the SHU also violated the Eighth Amendment. However, Judge Henderson, required by precedent to defer to the expertise of prison officials in matters of security, largely accepted the representations that those prisoners assigned to the SHU were "the worst of the worst" who posed an extreme threat to staff and other prisoners. While voicing grave concerns about it, Judge Henderson found the SHU constitutional if steps were taken to curb violence and identify people with emerging mental illness.

The Pelican Bay SHU has long been defended by California prison officials as an essential management tool to assure that other prisons in the state system could operate safely. The extreme isolation imposed on some prisoners was essential, officials maintained, to permit others to live in a more open regime with access to other prisoners, staff, and programming. In reality, the Pelican Bay SHU became a kind of model, in an extreme way, for what was becoming California's overall approach toward imprisonment in the era of mass incarceration.

Prisoners in the SHU were subject to a permanent "lockdown," confined to their cells 23 hours a day without access to education, work, or rehabilitative programs. But as the California prison system became catastrophically overcrowded in the late 1990s, many other prisons found themselves regularly on "lockdown." Resources for rehabilitation remained grossly inadequate despite the change in the name of the Department of Corrections to the Department of Corrections and Rehabilitation under Governor Schwarzenegger.

Instead of providing an exception, the Pelican Bay SHU revealed the logic underlying California's penal strategies. This strategy, which I have called "total incapacitation," views crime as the inevitable outcome of having criminals in the community.[7] Prison produces public safety by isolating criminals in places where their only immediate victims can be other prisoners or, sometimes, correctional officers. To control this level of internal threat, specialized prisons must allow a range of security regimes culminating in a supermax or SHU. Only in 2015 did the settlement of a new lawsuit challenging the practice of holding some prisoners in the SHU for more than a decade and signs of increase judicial intolerance of these extreme practices lead the State to agree to changes in the selection practices and duration of SHU incarceration.[8]

This pessimistic penal philosophy, which views all prisoners as dangerous and takes little or no responsibility for enabling them to reduce their risks, has dominated California corrections during more than three decades of mass incarceration. Today California prisons seem in the midst of change. Yet, it is far from clear that total incapacitation has been significantly weakened let alone replaced with a new carceral vision. Could Stockton's California Health Care Facility be that new vision?

CHCF and Pelican Bay's SHU do stand in striking contrast. The SHU was built to house the allegedly most dangerous prisoners in the state. The CHCF was built to house the most medically and mentally compromised prisoners in the state. The SHU was built to isolate prisoners and their bodies from contact with prison staff and other prisoners. The CHCF was built to facilitate staff access to the bodies of prisoners. The SHU workforce is oriented to containing prisoners they themselves view as capable of committing extreme violence, and they are trained accordingly. The Stockton facility's staff includes some 2,500 professional healthcare providers.

Pelican Bay State Prison Secure Housing Unit. Photograph by California Department of Corrections and Rehabilitation.

But a more careful examination shows remarkable similarities. Indeed, sometimes the more things change, the more they stay the same. So far, the SHU and CHCF represent not two paradigms of punishment but two sides of the same coin—in this case, the long-term custody and care of a great many people sentenced to long prison sentences. Steps that have already been taken to reject imprisonment for minor drug and property crimes, or to reduce some property crime sentences, will probably not be enough. Until California is ready to revisit its continued reliance on penal segregation and incapacitation to address crimes of violence or repeated crimes deemed serious (like burglaries), it is likely to be operating SHUs and CHCF like hospital facilities.

Three common aspects of these two model prisons, completed nearly a quarter century apart, suggest that not nearly enough has changed about California's approach to imprisonment. They were built to protect the State from litigation. Their planning and design accepted a supersized prison population as the norm. Finally, and most seriously, their design and operation suggest a management culture inside California corrections that cannot fully come to terms with the fact that prisoners retain their right to essential human dignity.

Adversarial Legal Design

Before the 1970s, prisons were largely left to philosophies of their chief executives and the general lack of adequate funding provided by state legislatures almost everywhere. As courts dropped their historic "hands-off" policy toward prison litigation in the 1960s and 1970s, prison managers adapted to the threat of lawsuits from inmates by developing legal departments and taking court precedents into account in their design and operation of prisons. Prisoners' advocates hoped such litigation might lead states to reduce reliance on incarceration, instead this coincided with a boom in prison construction driven by the politics of law and order. Paradoxically, while some prison managers welcomed the original litigation

in the hope that it would improve prison conditions over time, correctional administrators have evolved in the direction of "adversarial legalism," viewing courts and lawsuits as part of the permanent strategy for running prisons while complying in the most minimal way possible.[9] The rise of mass incarceration took place after an enormous increase in the legal regulation of the correctional enterprise. As a result, constitutional standards intended to provide a minimum level of decency have become instead a "maximum" conceded to prisoners only in order to avoid more costly court orders.

In the case of Pelican Bay, the SHU was built in large part to get the prison system out from under a number of court orders imposed during the 1980s to protect prisoners held in California's "adjustment centers," then California's most secure facilities for those prisoners considered the most dangerous.[10]

The California Health Care Facility is also a product of litigation, with nearly twenty years of court orders to improve care for prisoners with mental or physical illnesses. The first case, *Coleman v. Wilson* (1995)[11] held that California prisons lacked all of the essential elements of a constitutionally adequate system of mental healthcare. The second case, *Plata v. Davis* (2003),[12] settled with California agreeing that state prisons lacked constitutionally adequate medical care and to fix the problem within three years. Instead, three years later Judge Henderson declared California's remedial efforts a failure and appointed a Receiver to run the healthcare system in prisons. Despite this, chronic overcrowding stymied any real improvements in the health area. This set up a showdown over California's mass incarceration policies in front of a special three-judge federal court.[13] The special court ruled in favor of the prisoners in 2009 and ordered California to reduce the population in its prisons by some 40,000 prisoners; not eliminating overcrowding but reducing it to 137.5 percent of design capacity, a figure chosen to reflect the minimum intervention necessary to allow the earlier court orders to be fulfilled. California appealed, and two years later in *Brown v. Plata* (2011),[14] Justice Anthony Kennedy criticized California in unusually harsh judicial tones. The denial of basic medical and mental health care to its prisoners was "incompatible with the concept of human dignity and has no place in civilized society."

Stockton's CHCF, with its fifty-four specially equipped medical buildings, is the State's most significant effort to date to provide constitutionally adequate care for its prisoners with mental and physical illnesses. In California, where nearly 30 percent of all prisoners are classified by the federal court in the Coleman case as suffering from a major mental illness, and as many as 40 percent are estimated to have physical illnesses, more such units are already planned.[15] The difficulties of CHCF's launch suggest that managing sophisticated medical units like these from within California's current correctional culture will be extremely difficult.

Supersize

California was neither the only, nor even the first, state to integrate a supermax-style prison into its prison system. Although shunned in most other countries, the supermax-style has become ubiquitous in the United States. What stands out about California's approach is the sheer scale of its facilities. Pelican Bay's SHU was designed to house over 1,500 prisoners, and the State equipped itself with capacity to hold another 1,000 in secure housing units created at other prisons. This scale reflected not simply the state's population, but its commitment to keep a very large number of prisoners in SHUs on a long-term basis.

The California Health Care Facility reflects the same gargantuan outlook. Designed to hold nearly 3,000 prisoners, the scale reflects both the high proportion of California prisoners suffering from serious chronic illnesses and sentencing laws that make it unlikely that many of these prisoners will ever get to leave prison.

The scale of these technical and specialized prisons is daunting for two reasons. First, it presumes the lack of meaningful methods to establish secure and nondegrading prisons without reliance on isolation and the continued custody of thousands of aging and ill prisoners who pose little or no risk of crime in the community. Second, California's systemic problems managing mental and physical health is exacerbated by placing such huge administrative demands on prison managers and staff who are also expected to carry out an exhaustive and individualized care regime.

No Dignity

In his majority opinion in *Brown v. Plata,* Justice Kennedy wrote that prisoners, even while losing their liberty, "retain the essence of human dignity inherent in all persons." The

Pelican Bay State Prison Secure Housing Unit. Photograph by California Department of Corrections and Rehabilitation.

Court ordered California to follow through with the population reduction order and to fulfill the court orders to provide decent medical and mental health care. Yet despite the fact that California met its target of 137.5 percent of design capacity in January of 2016, the prisons remain a long way from respecting dignity. The problem is deeper than overcrowding. California's prisons were not designed with human dignity in mind.

The SHU was built with the intention of dehumanizing its residents who were isolated in conditions that expressed the desire to be punitive and subjected to extreme sensory deprivation that went beyond any security rationale. With its emphasis on at-risk prisoners and professional healthcare, one might expect the CHCF to be a place to find signs of dignity emerging as a correctional value in California. Yet the problems that led to a halt in prisoner intake in 2014 strongly suggest the contrary. Opening a prison, let alone a hospital prison, without sufficient soap or towels is missing the dignity basics. Allowing disabled patient prisoners to sit in their own urine or feces because of insufficient equipment—or allowing someone to bleed to death because of insufficient staff to respond to his alarm—belongs in the category of torture and degrading treatment. Such neglect reflects a basic institutional inability to treat people who are prisoners with respect for their humanity.

The need for change goes well beyond the culture of frontline staff and the local managers. The very design of CHCF, with its electrified fencing and expensive security infrastructure to contain prisoners mostly too ill to move about easily, suggests an inability to imagine prisoners and prisons beyond the logic of total incapacitation. Healthcare lawsuits and the largest and most comprehensive institutional reform efforts ever carried out in American prisons have not been able to change that logic, and they may have even deepened its adversarial defensiveness. Courts can help the process of change, but they almost certainly cannot bring it about unilaterally. The legal challenge to the Pelican Bay SHU was a missed opportunity to politically challenge the commitment

to total incapacitation in the 1990s. The continuing legal crisis over healthcare in California prisons and the difficulties the State faces in opening complex health-facility prisons like CHCF present a compelling opportunity for Californians at the ballot box—and through social movements—to demand a new correctional and public safety vision, one that places replaces outmoded 1970s thinking about crime and places human dignity at the center of prison design and operation. **B**

Notes

[1] Back in the rehabilitative era (1940–1976), newly opened prisons were given names reflecting their aspiration to "treat" inmates with distinct criminal profiles, such as the California Institute for Men (Chino), designed to hold younger prisoners deemed more reformable, or the California Medical Facility (Vacaville), designed to hold mentally ill prisoners. Since the 1980s, California has built twenty-three new prisons; all were simply named after their locations, such as California State Prison, Corcoran, or Calipatria State Prison. See the California Department of Corrections and Rehabilitation website for a list of state prisons (http://www.cdcr.ca.gov/index.html).

[2] California Correctional Health Services, "Achieving a Constitutional Level of Medical Care in California's Prisons, Twenty-Fifth Triannual Report of the Federal Receiver's Turn Around Plan of Action (1 February 2014).

[3] Like most California prisons built in the 1980s, Pelican Bay is more of a penal colony with several distinct units. The SHU is the largest, designed to hold nearly 1,800 prisoners. There are several other units, all classified for prisoners the system rates as high risk (level III or IV) but also one small unit for prisoners considered lower risk (level II).

[4] The name was changed by legislation from "Prison of the Redwoods." There is no direct evidence in the legislative history that the authors of the bill deliberately echoed the name of Alcatraz, but the notes do show that it was selected after a discussion of extreme sounding names such as "Slammer by the Sea" and "Casa No Pasa." See Keramet Reiter, "The Most Restrictive Alternative:

The Origins, Functions, Control, and Ethical Implications of the Supermax Prison, 1976–2010," unpublished dissertation (UC Berkeley, 2012), 99.

[5] See Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Palo Alto, CA: Stanford University Press, 1994).

[6] *Madrid v. Gomez* (1995) 889 F. Supp. 1146 - Dist. Court, ND California, 1995.

[7] See this developed further in Jonathan Simon, *Mass Incarceration on Trial: A Remarkable Court Decision and the Future of Prisons in America* (New York: The New Press, 2014).

[8] The case, *Ashker v. Brown*, involved a class of some 200 prisoners who had been held for at least ten years. In the summer of 2015, a concurring opinion by Justice Anthony Kennedy in a California death case unrelated to the SHU expressed grave reservation about prolonged solitary confinement. The settlement still allows the State to hold people in the SHU for as long as five years, and even longer if programs are provided to them. See Center for Constitutional Rights, http://ccrjustice.org/home/what-we-do/our-cases/ashker-v-brown.

[9] Robert Kagan, *Adversarial Legalism: The American Way of Law* (Cambridge, MA: Harvard University Press, 2001).

[10] The Madrid decision ordered changes in the management of the prison, which had relied heavily on violent physical repression in the form of "cell extractions" and "restraint chairs." Judge Henderson also found that the effect on prisoners already suffering from mental illness was so profound as to violate the Eighth Amendment ban on cruel and unusual punishment. Typical of the adversarial legalist logic and the limited jurisdiction of courts, the State complied at Pelican Bay but continued to house prisoners with mental illnesses in its other SHU-type facilities until finally ordered to end the practice system-wide in 2013 under the jurisdiction of another court, which had system-wide jurisdiction over prisoners with mental illness in California.

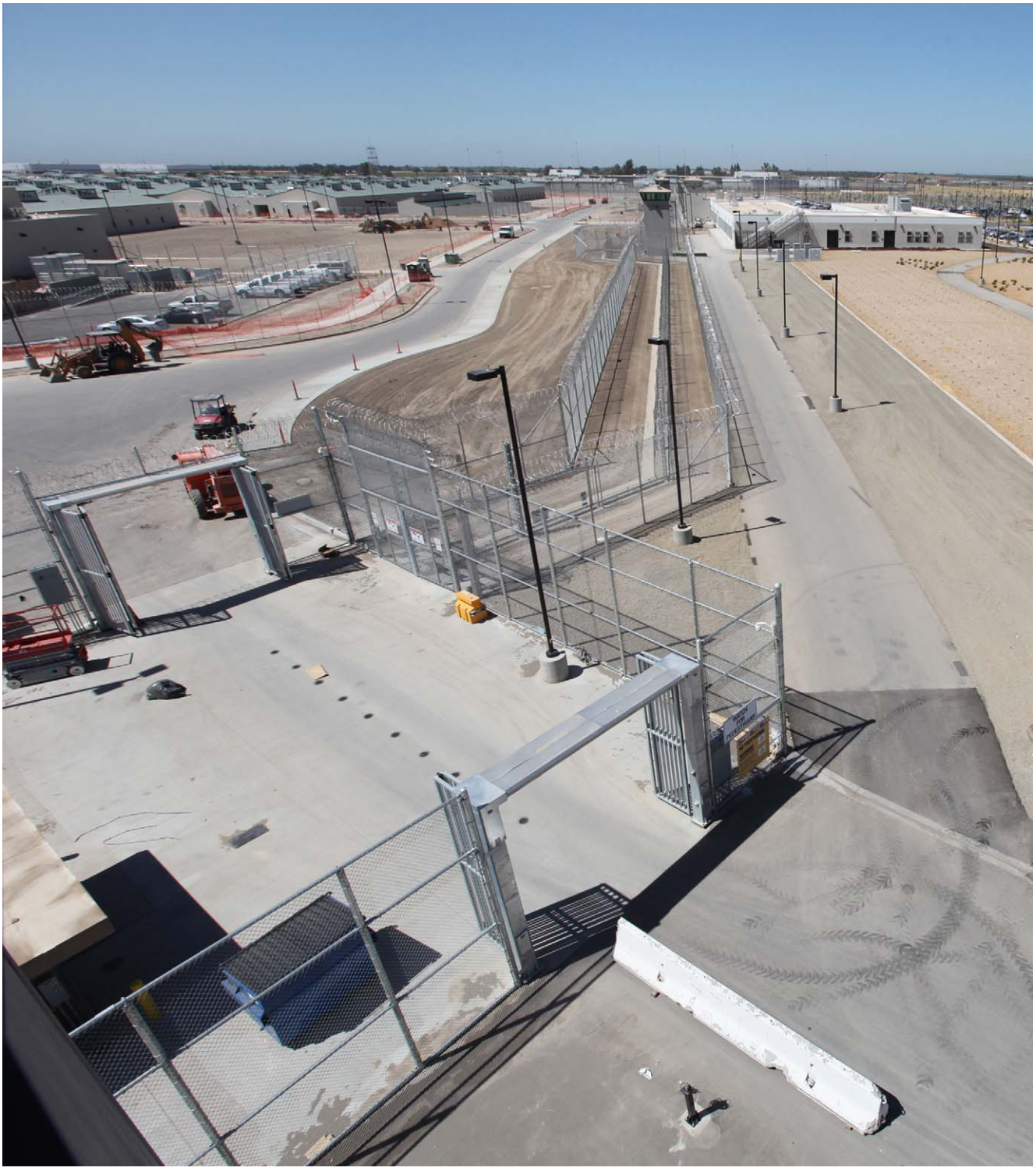
[11] *Coleman v. Wilson* (1995) 912 F. Supp. 1282 - Dist. Court, ED California, 1995.

[12] *Plata v. Davis* (2003) 329 F. 3d 1101 - Court of Appeals, 9th Circuit, 2003.

[13] The Prison Litigation Reform Act of 1995 requires that a special court composed of three federal judges, including one from the court of appeals, be convened before any population reduction or cap can be ordered.

[14] *Brown v. Plata* (2011) 563 US 493 (2011).

[15] See Lois M. Davis, et al. "Understanding the Public Health Implications of Prisoner Reentry: A State of the State Report," (RAND 2011) http://www.rand.org/content/dam/rand/pubs/monographs/2011/RAND_MG1165.pdf.



California Health Care Facility. Photograph by California Department of Corrections and Rehabilitation.