GARRISON S. JOHNSON v. CALIFORNIA

SUPREME COURT OF THE UNITED STATES

543 U.S. 499 (2005)

JUDGES: O'Connor, J., delivered the opinion of the Court, in which Kennedy, Souter, Ginsburg, and Breyer, JJ., joined. Ginsburg, J., filed a concurring opinion, in which Souter and Breyer, JJ., joined. Stevens, J., filed a dissenting opinion. Thomas, J., filed a dissenting opinion, in which Scalia, J., joined. Rehnquist, C. J., took no part in the decision of the case.

Justice **O'Connor** delivered the opinion of the Court.

The California Department of Corrections (CDC) has an unwritten policy of racially segregating prisoners in double cells in reception centers for up to 60 days each time they enter a new correctional facility. We consider whether strict scrutiny is the proper standard of review for an equal protection challenge to that policy.

I

A

CDC institutions house all new male inmates and all male inmates transferred from other state facilities in reception centers for up to 60 days upon their arrival. During that time, prison officials evaluate the inmates to determine their ultimate placement. Double-cell assignments in the reception centers are based on a number of factors, predominantly race. In fact, the CDC has admitted that the chances of an inmate being assigned a cellmate of another race are "'[p]retty close'" to zero percent. The CDC further subdivides prisoners within each racial group. Thus, Japanese-Americans are housed separately from Chinese-Americans, and Northern California Hispanics are separated from Southern California Hispanics.

The CDC's asserted rationale for this practice is that it is necessary to prevent violence caused by racial gangs. It cites numerous incidents of racial violence in CDC facilities and identifies five major prison gangs in the State: Mexican Mafia, Nuestra Familia, Black Guerilla Family, Aryan Brotherhood, and Nazi Low Riders. The CDC also notes that prison-gang culture is violent and murderous. An associate warden testified that if race were not considered in making initial housing assignments, she is certain there would be racial conflict in the cells and in the yard. Other prison officials also expressed their belief that violence and conflict would result if prisoners were not segregated. The CDC claims that it must therefore segregate all inmates while it determines whether they pose a danger to others.

With the exception of the double cells in reception areas, the rest of the state prison facilities--dining areas, yards, and cells--are fully integrated. After the initial 60-day period, prisoners are allowed to choose their own cellmates. The CDC usually grants inmate requests to be housed together, unless there are security reasons for denying them.

B

Garrison Johnson is an African-American inmate in the custody of the CDC. He has been incarcerated since 1987 and, during that time, has been housed at a number of California prison facilities. Upon his arrival at Folsom prison in 1987, and each time he was transferred to a new facility thereafter, Johnson was double-celled with another African-American inmate.

Johnson filed a complaint *pro se* in the United States District Court for the Central District of California on February 24, 1995, alleging that the CDC's reception-center housing policy violated his right to equal protection under the Fourteenth Amendment by assigning him cellmates on the basis of his race. He alleged that, from 1987 to 1991, former CDC Director James Rowland instituted and enforced an unconstitutional policy of housing inmates according to race. Johnson made the same allegations against former Director James Gomez for the period from 1991 until the filing of his complaint. The District Court dismissed his complaint for failure to state a claim. The Court of Appeals for the Ninth Circuit reversed and remanded, holding that Johnson had stated a claim for racial discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. *Johnson* v. *California*, 207 F.3d 650, 655 (9th Cir. 2000).

On remand, Johnson was appointed counsel and granted leave to amend his complaint. On July 5, 2000, he filed his Fourth Amended Complaint. Johnson claimed that the CDC's policy of racially segregating all inmates in reception-center cells violated his rights under the Equal Protection Clause.

Johnson has consistently challenged, and the CDC has consistently defended, the policy as a whole--as it relates to both new inmates and inmates transferred from other facilities. Johnson was first segregated in 1987 as a new inmate when he entered the CDC facility at Folsom. Since 1987, he has been segregated each time he has been transferred to a new facility. Thus, he has been subject to the CDC's policy both as a new inmate and as an inmate transferred from one facility to another.

After discovery, the parties moved for summary judgment. The District Court granted summary judgment to the defendants. The Court of Appeals for the Ninth Circuit affirmed. It held that the constitutionality of the CDC's policy should be reviewed under the deferential standard we articulated in *Turner* v. *Safley*, 482 U.S. 78 (1987) --not strict scrutiny. 321 F.3d at 798-799. Applying *Turner*, it held that Johnson had the burden of refuting the "common-sense connection" between the policy and prison violence. Though it believed this was a "close case," *id*. at 798, the Court of Appeals concluded that the policy survived *Turner*'s deferential standard, 321 F.3d at 807. We granted certiorari to decide which standard of review applies. 540 U.S. 1217 (2004).

II

A

We have held that "*all* racial classifications [imposed by government] . . . must be analyzed by a reviewing court under strict scrutiny." *Adarand Constructors, Inc.* v. *Pena*,

515 U.S. 200, 227 (1995) (emphasis added). Under strict scrutiny, the government has the burden of proving that racial classifications "are narrowly tailored measures that further compelling governmental interests." *Ibid.* We have insisted on strict scrutiny in every context, even for so-called "benign" racial classifications, such as race-conscious university admissions policies, see *Grutter* v. *Bollinger*, 539 U.S. 306, 326 (2003), race-based preferences in government contracts, see *Adarand*, *supra* at 226, and race-based districting intended to improve minority representation, see *Shaw* v. *Reno*, 509 U.S. 630, 650 (1993).

The reasons for strict scrutiny are familiar. Racial classifications raise special fears that they are motivated by an invidious purpose. Thus, we have admonished time and again that, "[a]bsent searching judicial inquiry into the justification for such race-based measures, there is simply no way of determining . . . what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics." *Richmond* v. *J. A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion). We therefore apply strict scrutiny to *all* racial classifications to "'smoke out' illegitimate uses of race by assuring that [government] is pursuing a goal important enough to warrant use of a highly suspect tool."

The CDC claims that its policy should be exempt from our categorical rule because it is "neutral"--that is, it "neither benefits nor burdens one group or individual more than any other group or individual." In other words, strict scrutiny should not apply because all prisoners are "equally" segregated. The CDC's argument ignores our repeated command that "racial classifications receive close scrutiny even when they may be said to burden or benefit the races equally." Indeed, we rejected the notion that separate can ever be equal--or "neutral"--50 years ago in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), and we refuse to resurrect it today. See also *Powers* v. *Ohio*, 499 U.S. 400, 410 (1991) (rejecting the argument that race-based peremptory challenges were permissible because they applied equally to white and black jurors and holding that "[i]t is axiomatic that racial classifications do not become legitimate on the assumption that all persons suffer them in equal degree").

We have previously applied a heightened standard of review in evaluating racial segregation in prisons. In *Lee* v. *Washington*, 390 U.S. 333 (1968) *(per curiam),* we upheld a three-judge court's decision striking down Alabama's policy of segregation in its prisons. Alabama had argued that desegregation would undermine prison security and discipline, *id*., at 334, but we rejected that contention. Three Justices concurred "to make explicit something that is left to be gathered only by implication from the Court's opinion"--"that prison authorities have the right, acting in good faith and in *particularized circumstances*, to take into account racial tensions in maintaining security, discipline, and good order in prisons and jails." *Ibid.* (emphasis added). The concurring Justices emphasized that they were "unwilling to assume that state or local prison authorities might mistakenly regard such an explicit pronouncement as evincing any dilution of this Court's firm commitment to the Fourteenth Amendment's prohibition of racial discrimination." *Ibid.*

The need for strict scrutiny is no less important here, where prison officials cite racial violence as the reason for their policy. As we have recognized in the past, racial classifications "threaten to stigmatize individuals by reason of their membership in a racial group and to *incite racial hostility.*" *Shaw*, *supra* at 643. Indeed, by insisting that inmates be

housed only with other inmates of the same race, it is possible that prison officials will breed further hostility among prisoners and reinforce racial and ethnic divisions. By perpetuating the notion that race matters most, racial segregation of inmates "may exacerbate the very patterns of [violence that it is] said to counteract." *Shaw*, *supra* at 648; see also Trulson & Marquart, The Caged Melting Pot: Toward an Understanding of the Consequences of Desegregation in Prisons, 36 Law & Soc. Rev. 743, 774 (2002) (in a study of prison desegregation, finding that "over [10 years] the rate of violence between inmates segregated by race in double cells surpassed the rate among those racially integrated"). See also Brief for Former State Corrections Officials as *Amici Curiae* 19 (opinion of former corrections officials from six States that "racial integration of cells tends to diffuse racial tensions and thus diminish interracial violence" and that "a blanket policy of racial segregation of inmates is contrary to sound prison management").

The CDC's policy is unwritten. Although California claimed at oral argument that two other States follow a similar policy, this assertion was unsubstantiated, and we are unable to confirm or deny its accuracy. Virtually all other States and the Federal Government manage their prison systems without reliance on racial segregation. Federal regulations governing the Federal Bureau of Prisons (BOP) expressly prohibit racial segregation. 28 CFR § 551.90 (2004). The United States contends that racial integration actually "leads to less violence in BOP's institutions and better prepares inmates for re-entry into society." Indeed, the United States argues, based on its experience with the BOP, that it is possible to address "concerns of prison security through individualized consideration without the use of racial segregation, unless warranted as a necessary and temporary response to a race riot or other serious threat of race-related violence." As to transferees, in particular, whom the CDC has already evaluated at least once, it is not clear why more individualized determinations are not possible.

Because the CDC's policy is an express racial classification, it is "immediately suspect." *Shaw*, 509 U.S., at 642. We therefore hold that the Court of Appeals erred when it failed to apply strict scrutiny to the CDC's policy and to require the CDC to demonstrate that its policy is narrowly tailored to serve a compelling state interest.

B

The CDC invites us to make an exception to the rule that strict scrutiny applies to all racial classifications, and instead to apply the deferential standard of review articulated in *Turner* v. *Safley*, 482 U.S. 78 (1987), because its segregation policy applies only in the prison context. We decline the invitation. In *Turner*, we considered a claim by Missouri prisoners that regulations restricting inmate marriages and inmate-to-inmate correspondence were unconstitutional. We rejected the prisoners' argument that the regulations should be subject to strict scrutiny, asking instead whether the regulation that burdened the prisoners' fundamental rights was "reasonably related" to "legitimate penological interests." *Id*. at 89.

We have never applied *Turner* to racial classifications. *Turner* itself did not involve any racial classification, and it cast no doubt on *Lee.* We think this unsurprising, as we have applied *Turner*'s reasonable-relationship test *only* to rights that are "inconsistent with proper incarceration." *Overton* v. *Bazzetta*, 539 U.S. 126, 131 (2003); see also *Pell* v. *Procunier*,

417 U.S. 817, 822 (1974) ("[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system"). This is because certain privileges and rights must necessarily be limited in the prison context. See *O'Lone* v. *Estate of Shabazz*, 482 U.S. 342, 348 (1987) ("'[L]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system'"). Thus, for example, we have relied on *Turner* in addressing First Amendment challenges to prison regulations, including restrictions on freedom of association, *Overton*, *supra;* limits on inmate correspondence, *Shaw* v. *Murphy*, 532 U.S. 223 (2001); restrictions on inmates' access to courts, *Lewis* v. *Casey*, 518 U.S. 343 (1996); restrictions on receipt of subscription publications, *Thornburgh* v. *Abbott*, 490 U.S. 401 (1989); and work rules limiting prisoners' attendance at religious services, *Shabazz*, *supra*. We have also applied *Turner* to some due process claims, such as involuntary medication of mentally ill prisoners, *Washington* v. *Harper*, 494 U.S. 210 (1990); and restrictions on the right to marry, *Turner*, *supra*.

The right not to be discriminated against based on one's race is not susceptible to the logic of *Turner.* It is not a right that need necessarily be compromised for the sake of proper prison administration. On the contrary, compliance with the Fourteenth Amendment's ban on racial discrimination is not only consistent with proper prison administration, but also bolsters the legitimacy of the entire criminal justice system. Race discrimination is "especially pernicious in the administration of justice." *Rose* v. *Mitchell*, 443 U.S. 545, 555 (1979). And public respect for our system of justice is undermined when the system discriminates based on race. Cf. *Batson* v. *Kentucky*, 476 U.S. 79, 99 (1986). When government officials are permitted to use race as a proxy for gang membership and violence without demonstrating a compelling government interest and proving that their means are narrowly tailored, society as a whole suffers. For similar reasons, we have not used *Turner* to evaluate Eighth Amendment claims of cruel and unusual punishment in prison. We judge violations of that Amendment under the "deliberate indifference" standard, rather than *Turner*'s "reasonably related" standard. This is because the integrity of the criminal justice system depends on full compliance with the Eighth Amendment.

In the prison context, when the government's power is at its apex, we think that searching judicial review of racial classifications is necessary to guard against invidious discrimination. Granting the CDC an exemption from the rule that strict scrutiny applies to all racial classifications would undermine our "unceasing efforts to eradicate racial prejudice from our criminal justice system." *McCleskey* v. *Kemp*, 481 U.S. 279, 309 (1987).

The CDC argues that "[d]eference to the particular expertise of prison officials in the difficult task of managing daily prison operations" requires a more relaxed standard of review for its segregation policy. But we have refused to defer to state officials' judgments on race in other areas where those officials traditionally exercise substantial discretion. For example, we have held that, despite the broad discretion given to prosecutors when they use their peremptory challenges, using those challenges to strike jurors on the basis of their race is impermissible. See *Batson*, *supra* at 89-96. Similarly, in the redistricting context, despite the traditional deference given to States when they design their electoral districts, we have

subjected redistricting plans to strict scrutiny when States draw district lines based predominantly on race. Compare generally *Vieth* v. *Jubelirer*, 541 U.S. 267 (2004) (partisan gerrymandering), with *Shaw* v. *Reno,* 509 U.S. 630 (1993) (racial gerrymandering).

We did not relax the standard of review for racial classifications in prison in *Lee*, and we refuse to do so today. Rather, we explicitly reaffirm what we implicitly held in *Lee:* The "necessities of prison security and discipline," 390 U.S. at 334, are a compelling government interest justifying only those uses of race that are narrowly tailored to address those necessities. See *Grutter*, 539 U.S. at 353 (Thomas, J., concurring in part and dissenting in part) (citing *Lee* for the principle that "protecting prisoners from violence might justify narrowly tailored racial discrimination"); *J. A. Croson Co.*, 488 U.S. at 521 (Scalia, J., concurring) (citing *Lee* for the proposition that "only a social emergency rising to the level of imminent danger to life or limb--for example, a prison race riot, requiring temporary segregation of inmates--can justify an exception to the principle embodied in the Fourteenth Amendment that '[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens'" (quoting *Plessy* v. *Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting))); see also *Pell*, 417 U.S. at 823 ("[C]entral to all other corrections goals is the institutional consideration of internal security within the correctional facilities themselves").

Justice Thomas would subject race-based policies in prisons to *Turner*'s deferential standard of review because, in his view, judgments about whether race-based policies are necessary "are better left in the first instance to the officials who run our Nation's prisons." But *Turner* is too lenient a standard to ferret out invidious uses of race. *Turner* requires only that the policy be "reasonably related" to "legitimate penological interests." 482 U.S. at 89. *Turner* would allow prison officials to use race-based policies even when there are race-neutral means to accomplish the same goal, and even when the race-based policy does not in practice advance that goal. We therefore reject the *Turner* standard for racial classifications in prisons because it would make rank discrimination too easy to defend.

The CDC protests that strict scrutiny will handcuff prison administrators and render them unable to address legitimate problems of race-based violence in prisons. Not so. Strict scrutiny is not "strict in theory, but fatal in fact." *Grutter*, 539 U.S. at 326-27. Strict scrutiny does not preclude the ability of prison officials to address the compelling interest in prison safety. Prison administrators, however, will have to demonstrate that any race-based policies are narrowly tailored to that end.

The fact that strict scrutiny applies "says nothing about the ultimate validity of any particular law; that determination is the job of the court applying strict scrutiny." At this juncture, no such determination has been made. On remand, the CDC will have the burden of demonstrating that its policy is narrowly tailored with regard to new inmates as well as transferees. Prisons are dangerous places, and the special circumstances they present may justify racial classifications in some contexts. Such circumstances can be considered in applying strict scrutiny, which is designed to take relevant differences into account.

III

We do not decide whether the CDC's policy violates the Equal Protection Clause. We hold only that strict scrutiny is the proper standard of review and remand the case to allow

the Court of Appeals for the Ninth Circuit, or the District Court, to apply it in the first instance. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

The **Chief Justice** took no part in the decision of this case.

Justice **Ginsburg,** with whom Justice **Souter** and Justice **Breyer** join, concurring.

The Court today resoundingly reaffirms the principle that state-imposed racial segregation is highly suspect and cannot be justified on the ground that "'all persons suffer [the separation] in equal degree.'" While I join that declaration without reservation, I write separately to express again my conviction that the same standard of review ought not control judicial inspection of every official race classification. As I stated most recently in *Gratz* v. *Bollinger*, 539 U.S. 244, 301 (2003) (dissenting opinion): "Actions designed to burden groups long denied full citizenship stature are not sensibly ranked with measures taken to hasten the day when entrenched discrimination and its aftereffects have been extirpated."

There is no pretense here, however, that the California Department of Corrections (CDC) installed its segregation policy to "correct inequalities." Experience in other States and in federal prisons strongly suggests that CDC's race-based assignment of new inmates and transferees, administratively convenient as it may be, is not necessary to the safe management of a penal institution.

Disagreeing with the Court that "strict scrutiny" properly applies to any and all racial classifications, but agreeing that the stereotypical classification at hand warrants rigorous scrutiny, I join the Court's opinion.

Justice **Stevens,** dissenting.

In my judgment a state policy of segregating prisoners by race during the first 60 days of their incarceration, as well as the first 60 days after their transfer from one facility to another, violates the Equal Protection Clause of the Fourteenth Amendment. The California Department of Corrections (CDC) has had an ample opportunity to justify its policy during the course of this litigation, but has utterly failed to do so whether judged under strict scrutiny or the more deferential standard set out in *Turner* v. *Safley,* 482 U.S. 78 (1987). The CDC had no incentive in the proceedings below to withhold evidence supporting its policy; nor has the CDC made any offer of proof to suggest that a remand for further factual development would serve any purpose other than to postpone the inevitable. I therefore agree with the submission of the United States as *amicus curiae* that the Court should hold the policy unconstitutional on the current record.

The CDC's segregation policy is based on a conclusive presumption that housing inmates of different races together creates an unacceptable risk of racial violence. Under the policy's logic, an inmate's race is a proxy for gang membership, and gang membership is a proxy for violence. The CDC, however, has offered scant empirical evidence or expert opinion to justify this use of race under even a minimal level of constitutional scrutiny. The

presumption underlying the policy is undoubtedly overbroad. The CDC has made no effort to prove what fraction of new or transferred inmates are members of race-based gangs, nor has it shown more generally that interracial violence is disproportionately greater than intraracial violence in its prisons. Proclivity toward racial violence unquestionably varies from inmate to inmate, yet the CDC applies its blunderbuss policy to *all* new and transferred inmates housed in double cells regardless of their criminal histories or records of previous incarceration.

The very real risk that prejudice (whether conscious or not) partly underlies the CDC's policy counsels in favor of relaxing the usual deference we pay to corrections officials in these matters. We should instead insist on hard evidence, especially given that California's policy is an outlier when compared to nationwide practice.

Given the inherent indignity of segregation and its shameful historical connotations, one might assume that the CDC came to its policy only as a last resort. Distressingly, this is not so: There is no evidence that the CDC has ever experimented with, or even carefully considered, race-neutral methods of achieving its goals. That the policy is unwritten reflects, I think, the evident lack of deliberation that preceded its creation.

Specifically, the CDC has failed to explain why it could not, as an alternative to automatic segregation, rely on an individualized assessment of each inmate's risk of violence when assigning him to a cell in a reception center. The Federal Bureau of Prisons and other state systems do so without any apparent difficulty. For inmates who are being transferred from one facility to another--who represent approximately 85% of those subject to the segregation policy--the CDC can simply examine their prison records to determine if they have any known gang affiliations or if they have ever engaged in or threatened racial violence. For example, the CDC has had an opportunity to observe the petitioner for almost 20 years; surely the CDC could have determined his placement without subjecting him to a period of segregation. For new inmates, assignments can be based on their presentence reports, which contain information about offense conduct, criminal record, and personal history--including any available information about gang affiliations. In fact, state law requires the county probation officer to transmit a presentence report to the CDC along with an inmate's commitment papers.

Despite the rich information available in these records, the CDC considers these records only rarely in assigning inmates to cells in the reception centers. The CDC's primary explanation for this is administrative inefficiency--the records, it says, simply do not arrive in time. The CDC's counsel conceded at oral argument that presentence reports "have a fair amount of information," but she stated that, "in California, the presentence report does not always accompany the inmate and frequently does not. It follows some period of time later from the county." Despite the state-law requirement to the contrary, counsel informed the Court that the counties are not preparing the presentence reports "in a timely fashion." Similarly, with regard to transferees, counsel stated that their prison records do not arrive at the reception centers in time to make cell assignments. Even if such inefficiencies might explain a temporary expedient in some cases, they surely do not justify a system-wide policy. When the State's interest in administrative convenience is pitted against the Fourteenth Amendment's ban on racial segregation, the latter must prevail. When there has

been no "serious, good faith consideration of workable race-neutral alternatives that will achieve the [desired goal]," *Grutter* v. *Bollinger*, 539 U.S. 306, 339 (2003), and when "obvious, easy alternatives" are available, *Turner,* 482 U.S. at 90, the conclusion that CDC's policy is unconstitutional is inescapable regardless of the standard of review that the Court chooses to apply.

Justice **Thomas,** with whom Justice **Scalia** joins, dissenting.

The questions presented in this case require us to resolve two conflicting lines of precedent. On the one hand, as the Court stresses, this Court has said that "'*all* racial classifications reviewable under the Equal Protection Clause must be strictly scrutinized.'" *Gratz* v. *Bollinger,* 539 U.S. 244 (2003) (emphasis added) (quoting *Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200, 224 (1995)). On the other, this Court has no less categorically said that "the [relaxed] standard of review we adopted in *Turner* [*v. Safley,* 482 U.S. 78 (1987),] applies to *all* circumstances in which the needs of prison administration implicate constitutional rights." *Washington* v. *Harper,* 494 U.S. 210, 224 (1990) (emphasis added).

Emphasizing the former line of cases, the majority resolves the conflict in favor of strict scrutiny. I disagree. The Constitution has always demanded less within the prison walls. Time and again, even when faced with constitutional rights no less "fundamental" than the right to be free from state-sponsored racial discrimination, we have deferred to the reasonable judgments of officials experienced in running this Nation's prisons. There is good reason for such deference in this case. California oversees roughly 160,000 inmates, in prisons that have been a breeding ground for some of the most violent prison gangs in America--all of them organized along racial lines. In that atmosphere, California racially segregates a portion of its inmates, in a part of its prisons, for brief periods of up to 60 days, until the State can arrange permanent housing. The majority is concerned with sparing inmates the indignity and stigma of racial discrimination. California is concerned with their safety and saving their lives. I respectfully dissent.