

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 03–636

GARRISON S. JOHNSON, PETITIONER *v.*
CALIFORNIA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[February 23, 2005]

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. App. to Pet. for Cert. 3a. The CDC further subdivides prisoners within each racial group. Thus, Japanese-Americans are housed separately from Chinese-

Opinion of the Court

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. Brief for Respondents 1–6. 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. *Id.*, at 2. The CDC also notes that prison-gang culture is violent and murderous. *Id.*, at 3. 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. App. 215a. Other prison officials also expressed their belief that violence and conflict would result if prisoners were not segregated. See, e.g., *id.*, at 305a–306a. The CDC claims that it must therefore segregate all inmates while it determines whether they pose a danger to others. See Brief for Respondents 29.

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. Fourth Amended Complaint 3, Record, Doc. No. 78. 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. See *ibid.*

Opinion of the Court

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. Second Amended Complaint 2–4, Record, Doc. No. 21. Johnson made the same allegations against former Director James Gomez for the period from 1991 until the filing of his complaint. *Ibid.* 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 (2000).

On remand, Johnson was appointed counsel and granted leave to amend his complaint. On July 5, 2000, he filed his Fourth Amended Complaint. Record, Doc. No. 81. 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 sought damages, alleging that former CDC Directors Rowland and Gomez, in their individual capacities, violated his constitutional rights by formulating and implementing the CDC's housing policy. He also sought injunctive relief against former CDC Director Stephen Cambra.

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

Opinion of the Court

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 on grounds that they were entitled to qualified immunity because their conduct was not clearly unconstitutional. The Court of Appeals for the Ninth Circuit affirmed. 321 F. 3d 791 (2003). 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. 321 F. 3d, at 802. 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.

The Court of Appeals denied Johnson’s petition for rehearing en banc. Judge Ferguson, joined by three others, dissented on grounds that “[t]he panel’s decision ignore[d] the Supreme Court’s repeated and unequivocal command that all racial classifications imposed by the government must be analyzed by a reviewing court under strict scrutiny, and fail[ed] to recognize that [the] *Turner* analysis is inapplicable in cases, such as this one, in which the right asserted is not inconsistent with legitimate penological objectives.” 336 F. 3d 1117 (2003) (internal quotation marks and citations omitted). 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.*

Opinion of the Court

Peña, 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.” *Ibid*.¹

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.” Brief for Respondents 16. In other words, strict scrutiny should not

¹ JUSTICE THOMAS takes a hands-off approach to racial classifications in prisons, suggesting that a “compelling showing [is] needed to overcome the deference we owe to prison administrators.” *Post*, at 21 (dissenting opinion). But such deference is fundamentally at odds with our equal protection jurisprudence. We put the burden on state actors to demonstrate that their race-based policies are justified.

Opinion of the Court

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.” *Shaw, supra*, at 651. 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. *Id.*, at 333–334. 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

Opinion of the Court

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 (citing *J. A. Croson Co., supra*, at 493 (plurality opinion) (emphasis added)). 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, see *Tr. of Oral Arg.* 30–31, this assertion was unsubstantiated, and we are unable to confirm or deny its accuracy.² Virtually all other States and the Federal Govern-

²Though, as JUSTICE THOMAS points out, see *post*, at 22–23, and n. 12, inmates in reception centers in Oklahoma and Texas “are not generally assigned randomly to racially integrated cells,” it is also the case that “these inmates are not precluded from integrated cell assignments.” Oklahoma Dept. of Corrections, *Policies and Procedures, Operations Memorandum No. OP–030102, Inmate Housing* (Sept. 16, 2004), available at <http://www.doc.state.ok.us/docs/policies.htm> (as visited Jan. 21, 2005,

Opinion of the Court

ment manage their prison systems without reliance on racial segregation. See Brief for United States as *Amicus Curiae* 24. Federal regulations governing the Federal Bureau of Prisons (BOP) expressly prohibit racial segregation. 28 CFR §551.90 (2004) (“[BOP] staff shall not discriminate against inmates on the basis of race, religion, national origin, sex, disability, or political belief. This includes the making of administrative decisions and providing access to work, housing and programs”). 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.” Brief for United States as *Amicus Curiae* 25. 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.” *Id.*, at 24. 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 classifica-

and available in the Clerk of Court’s case file); Texas Dept. of Criminal Justice, Security Memorandum No. SM–01.28, Assignment to General Population Two-Person Cells (June 15, 2002). See also Brief for Former State Corrections Officials as *Amici Curiae* 20, n. 10 (“To the extent that race is considered in the assignment calculus in Oklahoma, it appears to be one factor among many, and as a result, individualized consideration is given to all inmates”). We therefore have no way of knowing whether, in practice, inmates in Oklahoma and Texas, like those in California, have close to no chance, App. to Pet. for Cert. 3a, of being celled with a person of a different race. See also Brief for Former State Corrections Officials as *Amici Curiae* 19–20 (“[W]e are aware of no state other than California that assumes that every incoming prisoner is incapable of getting along with a cell mate of a different race. And we are aware of no state other than California that has acted on such an assumption by adopting an inflexible and absolute policy of racial segregation of double cells in reception centers”).

Opinion of the Court

tion, it is “immediately suspect.” *Shaw*, 509 U. S., at 642; see also *Washington v. Seattle School Dist. No. 1*, 458 U. S. 457, 485 (1982). 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. *Id.*, at 81. 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

Opinion of the Court

incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system” (quoting *Price v. Johnston*, 334 U.S. 266, 285 (1948))). 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) (“[P]ublic respect for our criminal justice system and the rule of law will be strengthened if we ensure that no citizen is disqualified from jury service because of his race”). 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

Opinion of the Court

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. See *Hope v. Pelzer*, 536 U. S. 730, 738 (2002) (asking whether prison officials displayed “‘deliberate indifference’ to the inmate’s health or safety” where an inmate claimed that they violated his rights under the Eighth Amendment (quoting *Hudson v. McMillian*, 503 U. S. 1, 8 (1992))). This is because the integrity of the criminal justice system depends on full compliance with the Eighth Amendment. See *Spain v. Procunier*, 600 F.2d 189, 193–194 (CA9 1979) (Kennedy, J.) (“[T]he full protections of the eighth amendment most certainly remain in force [in prison]. The whole point of the amendment is to protect persons convicted of crimes. . . . Mechanical deference to the findings of state prison officials in the context of the eighth amendment would reduce that provision to a nullity in precisely the context where it is most necessary” (internal quotation marks omitted)).

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) (internal quotation marks omitted).

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. Brief for Respondents 18. But we have refused to defer to state officials’

Opinion of the Court

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. Jubilier*, 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”).

Opinion of the Court

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." *Post*, at 20. 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. See, e.g., 321 F. 3d, at 803 (case below) (reasoning that, under *Turner*, the Court of Appeals did "not have to agree that the policy actually advances the CDC's legitimate interest, but only [that] 'defendants might reasonably have thought that the policy would advance its interests'"). See also *Turner*, *supra*, at 90 (warning that *Turner* is not a "least restrictive alternative test" (internal quotation marks omitted)).

For example, in JUSTICE THOMAS' world, prison officials could segregate visiting areas on the ground that racial mixing would cause unrest in the racially charged prison atmosphere. Under *Turner*, "[t]he prisoner would have to prove that there would *not* be a riot. [But] [i]t is certainly 'plausible' that such a riot could ensue: our society, as well as our prisons, contains enough racists that almost any interracial interaction could potentially lead to conflict." 336 F. 3d, at 1120 (case below) (Ferguson, J., dissenting from denial of rehearing en banc). Indeed, under JUSTICE THOMAS' view, there is no obvious limit to permissible segregation in prisons. It is not readily apparent why, if segregation in reception centers is justified, segregation in the dining halls, yards, and general housing areas is not also permissible. Any of these areas could be the potential site of racial violence. If JUSTICE THOMAS' approach were

Opinion of the Court

to carry the day, even the blanket segregation policy struck down in *Lee* might stand a chance of survival if prison officials simply asserted that it was necessary to prison management. 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. See also *post*, at 9, 24–25 (THOMAS, J., dissenting). Not so. Strict scrutiny is not “strict in theory, but fatal in fact.” *Adarand*, 515 U.S., at 237 (internal quotation marks omitted); *Grutter*, 539 U.S., at 326–327 (“Although all governmental uses of race are subject to strict scrutiny, not all are invalidated by it”). 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. See *id.*, at 327 (“When race-based action is necessary to further a compelling governmental interest, such action does not violate the constitutional guarantee of equal protection so long as the narrow-tailoring requirement is also satisfied”).³

³JUSTICE THOMAS characterizes the CDC’s policy as a “limited” one, see *post*, at 2, but the CDC’s policy is in fact sweeping in its application. It applies to *all* prisoners housed in double cells in reception centers, whether newly admitted or transferred from one facility to another. Moreover, despite JUSTICE THOMAS’ suggestion that the CDC considers other nonracial factors in determining housing placements, the CDC itself has admitted that, in practice, there is a “[p]retty close” to zero percent chance that an inmate will be housed with a person of a different race. App. to Pet. for Cert. 3a. See also generally *post*, at 1–2, and n. 1 (STEVENS, J., dissenting). Thus, despite an inmate’s “age, physical size, mental health, medical needs, [and] criminal history,” *post*, at 13 (THOMAS, J., dissenting), the fact that he is black categorically precludes him from being celled with a white inmate. As we explain, see *infra*, at 15, we do not decide whether the threat of violence in Califor-

Opinion of the Court

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.” *Adarand, supra*, at 229–230. 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. See *Consolidated Rail Corporation v. Gottshal*, 512 U. S. 532, 557–558 (1994) (reversing and remanding for the lower court to apply the correct legal standard in the first instance); *Lucas v. South Carolina Coastal Council*, 505 U. S. 1003, 1031–1032 (1992) (same). 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.

nia prisons is sufficient to justify such a broad policy.