

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JOHNSON *v.* CALIFORNIA ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 03–636. Argued November 2, 2004—Decided February 23, 2005

The California Department of Corrections’ (CDC) unwritten policy of racially segregating prisoners in double cells for up to 60 days each time they enter a new correctional facility is based on the asserted rationale that it prevents violence caused by racial gangs. Petitioner Johnson, an African-American inmate who has been intermittently double-celled under the policy’s terms ever since his 1987 incarceration, filed this suit alleging that the policy violates his Fourteenth Amendment right to equal protection. The District Court ultimately granted defendant former CDC officials summary judgment on grounds that they were entitled to qualified immunity. The Ninth Circuit affirmed, holding that the policy’s constitutionality should be reviewed under the deferential standard articulated in *Turner v. Safley*, 482 U. S. 78, not under strict scrutiny, and that the policy survived *Turner* scrutiny.

Held: Strict scrutiny is the proper standard of review for an equal protection challenge to the CDC’s policy. Pp. 4–15.

(a) Because the CDC’s policy is “immediately suspect” as an express racial classification, *Shaw v. Reno*, 509 U. S. 630, 642, the Ninth Circuit erred in failing to apply strict scrutiny and thereby to require the CDC to demonstrate that the policy is narrowly tailored to serve a compelling state interest, see *Adarand Constructors, Inc. v. Peña*, 515 U. S. 200, 227. “[A]ll racial classifications [imposed by government] . . . must be analyzed . . . under strict scrutiny,” *ibid.*, in order to “‘smoke out’ illegitimate uses of race by assuring that [government] is pursuing a goal important enough to warrant [such] a highly suspect tool,” *Richmond v. J. A. Croson Co.*, 488 U. S. 469, 493. The CDC’s claim that its policy should be exempt from this categorical rule because it is “neutral”—*i.e.*, because all prisoners are

Syllabus

“equally” segregated—ignores this Court’s 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, the Court rejected the notion that separate can ever be equal—or “neutral”—50 years ago in *Brown v. Board of Education*, 347 U. S. 483, and refuses to resurrect it today. The Court has previously applied a heightened standard of review in evaluating racial segregation in prisons. *Lee v. Washington*, 390 U. S. 333. The need for strict scrutiny is no less important here. 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. Virtually all other States and the Federal Government manage their prison systems without reliance on racial segregation. In fact, the United States argues that it is possible to address prison security concerns through individualized consideration without using racial segregation, unless it is warranted as a necessary and temporary response to a 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. Pp. 4–9.

(b) The Court declines the CDC’s invitation to make an exception to the categorical strict scrutiny rule and instead to apply *Turner*’s deferential review standard on the ground that the CDC’s policy applies only in the prison context. The Court has never applied the *Turner* standard—which asks whether a regulation that burdens prisoners’ fundamental rights is “reasonably related” to “legitimate penological interests,” 482 U. S., at 89—to racial classifications. *Turner* itself did not involve such a classification, and it cast no doubt on *Lee*. That is unsurprising, as the Court has applied the *Turner* test *only* to rights that are “inconsistent with proper incarceration.” *Overton v. Bazzetta*, 539 U. S. 126, 131. The right not to be discriminated against based on one’s race is not susceptible to *Turner*’s logic because 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. Cf. *Batson v. Kentucky*, 476 U. S. 79, 99. Deference to the particular expertise of officials managing daily prison operations does not require a more relaxed standard here. The Court did not relax the standard of review for racial classifications in prison in *Lee*, and it refuses to do so today. Rather, it explicitly reaffirms that the “necessities of prison security and discipline,” *Lee, supra*, at 334, are a compelling government interest justifying only those uses of race that are narrowly tailored to address those necessities, see, e.g., *Grutter v. Bollinger*, 539 U. S. 306,

Syllabus

353. Because *Turner*'s standard 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, it is too lenient a standard to ferret out invidious uses of race. Contrary to the CDC's protest, strict scrutiny will not render prison administrators unable to address legitimate problems of race-based violence in prisons. 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. Pp. 9–15.

(c) The Court does not decide whether the CDC's policy violates equal protection, but leaves it to the Ninth Circuit, or the District Court, to apply strict scrutiny in the first instance. See, e.g., *Consolidated Rail Corporation v. Gottshall*, 512 U. S. 532, 557–558. P. 15.

321 F. 3d 791, reversed and remanded.

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.