

GINSBURG, J., concurring

**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 GINSBURG, with whom JUSTICE SOUTER and JUSTICE BREYER join, concurring.

I join the Court’s opinion, subject to the reservation expressed in *Grutter v. Bollinger*, 539 U. S. 306, 344–346 (2003) (GINSBURG, J., 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.” *Ante*, at 6 (quoting *Powers v. Ohio*, 499 U. S. 400, 410 (1991)). 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.” See also *Grutter*, 539 U. S., at 344–346 (GINSBURG, J., concurring); *Adarand Constructors, Inc. v. Peña*, 515 U. S. 200, 271–276 (1995) (GINSBURG, J., dissenting).

There is no pretense here, however, that the California Department of Corrections (CDC) installed its segregation policy to “correct inequalities.” See Wechsler, *The Nation-*

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alization of Civil Liberties and Civil Rights, Supp. to 12 Tex. Q. 10, 23 (1968). Experience in other States and in federal prisons, see *ante*, at 7–8; *post*, at 3–4 (STEVENSON, J., dissenting), 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, see *ante*, at 4–9, 11–12, 14, but agreeing that the stereotypical classification at hand warrants rigorous scrutiny, I join the Court’s opinion.