

STATE OF CALIFORNIA  
**GOVERNMENT CLAIM**

DGS ORIM 006 (Rev. 08/19)

DEPARTMENT OF GENERAL SERVICES  
OFFICE OF RISK AND INSURANCE MANAGEMENT

**CLAIMANT INFORMATION**

LAST NAME Argueta Rivera		FIRST NAME Jose Alcides		MIDDLE INITIAL
INMATE OR PATIENT IDENTIFICATION NUMBER (if applicable) CDCR # [REDACTED]		BUSINESS NAME (if applicable) N/A		
TELEPHONE NUMBER [REDACTED]		EMAIL ADDRESS [REDACTED]		
MAILING ADDRESS [REDACTED]		CITY [REDACTED]	STATE CA	ZIP [REDACTED]
IS THE CLAIMANT UNDER 18 YEARS OF AGE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		INSURED NAME (Insurance Company Subrogation) N/A		
IS THIS AN AMENDMENT TO A PREVIOUSLY EXISTING CLAIM? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		EXISTING CLAIM NUMBER (if applicable) N/A	EXISTING CLAIMANT NAME (if applicable) N/A	

**ATTORNEY OR REPRESENTATIVE INFORMATION**

LAST NAME Talla		FIRST NAME Vasudha		MIDDLE INITIAL
TELEPHONE NUMBER 415-293-6308		EMAIL ADDRESS vtalla@aclunc.org		
MAILING ADDRESS 39 Drumm Street		CITY San Francisco	STATE CA	ZIP 94111

**CLAIM INFORMATION**

STATE AGENCIES OR EMPLOYEES AGAINST WHOM THE CLAIM IS FILED See attachment	DATE OF INCIDENT See attachment
LATE CLAIM EXPLANATION (Required, if incident was more than six months ago)	

N/A

DOLLAR AMOUNT OF CLAIM See attachment	CIVIL CASE TYPE (Required, if amount is more than \$10,000) <input type="checkbox"/> Limited (\$25,000 or less) <input checked="" type="checkbox"/> Non-Limited (over \$25,000)
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DOLLAR AMOUNT EXPLANATION

See attachment

INCIDENT LOCATION

See attachment

SPECIFIC DAMAGE OR INJURY DESCRIPTION

See attachment

CIRCUMSTANCES THAT LED TO DAMAGE OR INJURY

See attachment

EXPLAIN WHY YOU BELIEVE THE STATE IS RESPONSIBLE FOR THE DAMAGE OR INJURY

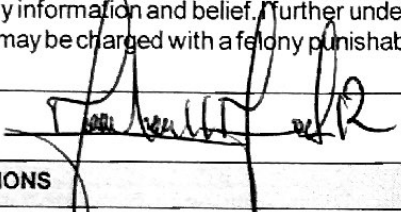
See attachment

**AUTOMOBILE CLAIM INFORMATION**

DOES THE CLAIM INVOLVE A STATE VEHICLE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	VEHICLE LICENSE NUMBER (if known) N/A	STATE DRIVER NAME (if known) N/A
HAS A CLAIM BEEN FILED WITH YOUR INSURANCE CARRIER? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	INSURANCE CARRIER NAME N/A	INSURANCE CLAIM NUMBER N/A
HAVE YOU RECEIVED AN INSURANCE PAYMENT FOR THIS DAMAGE OR INJURY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	AMOUNT RECEIVED (if any) N/A	AMOUNT OF DEDUCTIBLE (if any) N/A

**NOTICE AND SIGNATURE**

I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to \$10,000 (Penal Code section 72).

SIGNATURE 	PRINTED NAME Jose Alcides Argueta Rivera	DATE 11/06/2021
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**INSTRUCTIONS**

- Include a check or money order for \$25, payable to the State of California.
  - \$25 filing fee is not required for amendments to existing claims.
- Confirm all sections relating to this claim are complete and the form is signed.
- Attach copies of any documentation that supports your claim. Do not submit originals.

Mail the claim form and all attachments to:  
Office of Risk and Insurance Management  
Government Claims Program  
P.O. Box 989052, MS414  
West Sacramento, CA 95798-9052

Claim forms can also be delivered to:  
Office of Risk and Insurance Management  
Government Claims Program  
707 3rd Street, 1st Floor  
West Sacramento, CA 95605  
1-800-955-0045

**Department of General Services Privacy Notice on Information Collection**

This notice is provided pursuant to the Information Practices Act of 1977, California Civil Code Sections 1798.17 & 1798.24 and the Federal Privacy Act (Public Law 93-579).

The Department of General Services (DGS), Office of Risk and Insurance Management (ORIM), is requesting the information specified on this form pursuant to Government Code Section 905.2(c).

The principal purpose for requesting this data is to process claims against the state. The information provided will/may be disclosed to a person, or to another agency where the transfer is necessary for the transferee-agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with California Civil Code Section 1798.25.

Individuals should not provide personal information that is not requested.

The submission of all information requested is mandatory unless otherwise noted. If you fail to provide the information requested to DGS, or if the information provided is deemed incomplete or unreadable, this may result in a delay in processing.

**Department Privacy Policy**

The information collected by DGS is subject to the limitations in the Information Practices Act of 1977 and state policy ([see State Administrative Manual 5310-5310.7](#)). For more information on how we care for your personal information, please read the [DGS Privacy Policy](#).

**Access to Your Information**

ORIM is responsible for maintaining collected records and retaining them for 5 years. You have a right to access records containing personal information maintained by the state entity. To request access, contact:

DGSORIM  
Public Records Officer  
707 3<sup>rd</sup> St., West Sacramento, CA 95605  
(916) 376-5300

## **Attachment to State of California Government Claim (Form DGS ORIM 006)**

**Claimant:** Jose Alcides Argueta Rivera, on behalf of himself as an individual and on behalf of a class of similarly-situated individuals.

### **Claim Information**

#### **State Agencies or Employees Against Whom Claim is Filed:**

Jose Alcides Argueta Rivera, the Claimant, files this claim on his behalf and on behalf of a class of similarly-situated individuals against the California Department of Corrections and Rehabilitation (“CDCR”); Gavin Newsom, Governor of the State of California; Kathleen Allison, Secretary of CDCR (and any predecessor or successor Secretary of CDCR); Brian Cate, Warden of the California Correctional Institution (and any predecessor or successor Warden of the California Correctional Institution); Doe individual employees of CDCR who are responsible for implementing CDCR policies and practices related to the transfer of individuals from CDCR custody to the custody of U.S. Immigration and Customs Enforcement (“ICE”), including Mr. Argueta Rivera and the class of individuals who are similarly-situated; and Doe individual employees who are employees of CDCR and engaged in actual notification of ICE of Mr. Argueta Rivera’s presence in CDCR custody, transmitted any information about Mr. Argueta Rivera to ICE, facilitated in any way Mr. Argueta Rivera’s transfer to ICE custody.

#### **Date of Incident:**

Mr. Argueta Rivera was transferred by CDCR and Doe employees to the custody of ICE on July 27, 2020. Prior to July 27, 2020, and after and up to the date of this claim, CDCR, Governor Newsom, the CDCR Secretary, and CDCR employees transferred similarly-situated individuals from CDCR custody to ICE custody. This claim uses the term “transfer” to include the range of actions, policies, and procedures adopted and implemented by the state and its employees to facilitate ICE’s ability to take custody of an individual from CDCR custody. These actions, policies, and procedures include, but are not limited to, notifying ICE of an individual’s presence in CDCR custody; providing information to ICE about an individual in CDCR custody, including name, date and place of birth, and scheduled release date; granting detainer requests from ICE, including those in which probable cause of removability is founded upon biometrics-based checks of databases; placing “ICE holds” in an individual’s Central File and other CDCR records; permitting ICE to interview individuals in CDCR custody, and facilitating those interviews by transferring individuals among CDCR facilities; coordinating with ICE to release individuals from CDCR custody to ICE custody up to several days in advance of their scheduled release date; transferring individuals among CDCR facilities to permit ICE or its private contractor G4S to take custody of them; processing an individual for release to ICE or G4S; holding an individual in a secure area on CDCR premises until ICE or G4S arrives to take custody of the individual; and physically assisting ICE or G4S to take custody of the individual. These actions facilitate the “transfer” of custody whether or not CDCR or ICE uses the term “transfer.”

**Dollar Amount of Claim:** Over \$25,000.

**Dollar Amount Explanation:**

Mr. Argueta Rivera seeks damages in an amount over \$25,000 that consists of actual and compensatory damages, nominal damages, punitive and exemplary damages, and treble damages for the specific damages and injuries described in further detail below.

The class of individuals that are similarly situated to Mr. Argueta Rivera seek actual and compensatory damages, nominal damages, punitive and exemplary damages, and treble damages for the specific damages and injuries described in further detail below.

**Incident Location:**

Mr. Argueta Rivera was transferred from CDCR custody to ICE custody at the California Correctional Institution (“CCI”), located at 24900 Highway 202, Tehachapi, CA 93561, and the events forming the basis of his claim occurred at CCI-Tehachapi and/or CDCR offices in Sacramento, California.

The class of individuals that are similarly-situated to Mr. Argueta Rivera were incarcerated in CDCR custody throughout California, were transferred from CDCR custody throughout California to ICE custody, and suffered injuries as a result of CDCR policies and practices formulated in Sacramento, California and implemented there and across California.

**Specific Damage or Injury Description:**

As a direct and proximate result of the actions of the state and its employees described below, Mr. Argueta Rivera suffered a deprivation of his liberty and detention by ICE and G4S for 58 days; physical pain; mental suffering; loss of enjoyment of life; inconvenience; grief; anxiety; humiliation; and emotional distress.

As a direct and proximately result of the actions of the state and its employees described below, a class of similarly-situated individuals suffered a deprivation of their liberty; detention by ICE and G4S; physical pain; mental suffering; loss of enjoyment of life; inconvenience; grief; anxiety; humiliation; and emotional distress..

**Circumstances that Led to Damage or Injury:**

During the COVID-19 pandemic, people incarcerated in California’s state prisons count the days to their release from custody. Release means not just the reunion with family and with their lives on the outside. It means safety from the scourge of COVID-19 coursing through California’s prisons, jails, and detention centers. At the time of this filing, over 20,000 people in CDCR custody have tested positive for COVID-19, with dozens of people dying and dozens more being infected each day.

As the COVID-19 pandemic rages on, carceral settings are among the most dangerous places in the country. For that reason, the Centers for Disease Control (“CDC”) and medical and public health experts have admonished that carceral agencies should avoid transfers. CDCR, Governor Newsom, the CDCR Secretary, and CDCR employees are well-aware that transferring

individuals among prisons and detention facilities exposes people in custody to a greater risk of contracting COVID-19. Transfers among and into CDCR facilities have led to outbreaks of COVID-19 in many facilities, sickening thousands of people and killing dozens. To address these outbreaks and mitigate against further exposure of individuals in their custody to COVID-19, CDCR itself suspended intake and transfers into CDCR facilities in March and again in June 2020.

Yet CDCR and state employees continued to transfer individuals to ICE custody, including from CDCR facilities with active COVID-19 outbreaks. They have used force or threat of force to put people into ICE custody, where they know many will contract infection and die. They transferred people to ICE even though they were aware that ICE detention centers have proven themselves to be among the most dangerous carceral settings because of ICE's abject failure take meaningful steps to prevent the virus's spread and provide medical care to those who need it. As one court recently observed, detention centers are closed environments that amplify the virus and pose a grave threat of harm to individuals residing and working in them. *Frailhat v. ICE*, Case No. 5:19-cv-1546-JGB-SHK, Dkt. No. 240 at 5-6 (C.D. Cal. Oct 7, 2020). In ICE detention facilities in particular, where people cycle through the facilities as they are arrested, detained, transferred, deported, or released, COVID-19 outbreaks are especially acute because of the high turnover and transfers. *Id.* Thousands of individuals have tested positive for COVID-19 across ICE facilities nationwide, while ICE continues to transfer dozens of people weekly. *Id.* at 7.

In April 2020, the virus began spreading rapidly in the Otay Mesa Detention Center in San Diego, California after a staff member tested positive. In April and May 2020, over 150 individuals detained at Otay Mesa contracted COVID-19 and one person tragically died from COVID-19 complications.

In July and August 2020, dozens of individuals detained at the Mesa Verde Detention Facility, an ICE detention center in Bakersfield, California, contracted COVID-19. The first detained person to test positive did so upon arrival at Mesa Verde after being transferred from CDCR custody. Not only did CDCR's reckless and negligent decisions cause the spread of COVID-19 from one of its facilities to ICE detention centers, CDCR continued to place people in danger by transferring them to ICE after the first positive diagnosis on July 1, 2020. Only in August 2020 did a court order halt the transfer of people into Mesa Verde. In recent weeks, over a dozen staff members have tested positive for COVID-19, including one staff member who previously contracted and recovered from COVID-19. Only a few days ago, a court characterized ICE's conduct in overseeing conditions at Mesa Verde as "appalling" and "abominable." *Zepeda Rivas v. Jennings*, Case No. 3:20-cv-02731-VC, Dkt. No. 867 at 2-3 (N.D. Cal. Dec. 3, 2020). Nine months into the pandemic, and despite judicial intervention, no detailed plan to mitigate the risk of a COVID-19 outbreak or contain one that may yet recur exists for Mesa Verde. *Id.* at 2.

Despite full knowledge of the outbreaks at Mesa Verde and Otay Mesa, CDCR and state employees refused to acknowledge the demonstrable risks of transferring people to ICE custody. Throughout August and September, CDCR and state employees transferred individuals to ICE who were then detained at the Adelanto Detention Center. In September 2020, a COVID-19 outbreak gripped the facility. Dozens of individuals and employees at Adelanto were infected with the virus. Again, emergency intervention by a court forced ICE to stop transfers of people into Adelanto and to release hundreds of people from the facility in order to address the outbreak. In doing so, the court noted serious concerns with the veracity of the agency's representations and its ability to protect individuals from COVID-19. In the first week of December 2020, the beginning of another COVID-19 outbreak appears to be underway: over a dozen detained people have tested positive and one person is hospitalized, while sixteen staff members are infected with COVID-19.

Unfathomably, even after outbreaks at Adelanto, Mesa Verde, and Otay Mesa have sickened and subjected hundreds of people to a painful and life-threatening illness, CDCR and state employees persist in transferring people to the custody of ICE. Those people are detained in a newly-opened ICE detention center in McFarland, California, at Imperial or Otay Mesa, or flown across the country to other ICE facilities. In McFarland, ICE is rapidly filling the Golden State Annex with detained people. Upon arrival at Golden State, people are not consistently given verbal screenings for symptoms of COVID-19. While they are tested upon arrival, it is unclear what kind of tests are being used. Nor is it clear whether test results are immediate, accurate, or taken at a time when an individual's viral load can be detected. People are not placed in a quarantine or isolation and instead are sent directly to a dormitory to be housed alongside people who have arrived previously and those who arrive subsequently. There is no ability to engage in social distancing while eating, in the dayroom, using telephones, or using the toilets, sinks, and showers. Golden State has already housed people with COVID-19, and threatens to be the site of the next COVID-19 outbreak.

No law requires California to comply with ICE's requests for transfer—they are voluntary—and California has otherwise disavowed any interest in the existing civil immigration detention system in California, in which private prison companies warehouse individuals, often without the right to bail, for extended periods of time and are routinely cited for medical neglect. Further, the state and its employees are aware that transfers to ICE are unlawful for other reasons. Transfers to ICE's private contractor G4S violate federal law that prohibits anyone other than specified federal government employees from conducting immigration arrests. In addition, ICE detainers are issued by agents without any judicial review or judicial determination (either before or promptly after the ICE arrest) of whether there is probable cause of the individual's removability from the United States. And some of these detainers are issued solely on the basis of biometrics-based checks of databases that are so unreliable, outdated, and inaccurate they cannot provide probable cause for an immigration arrest. Indeed, the state and its employees have transferred U.S. citizens to ICE custody because they have chosen to honor and transfer people pursuant to biometrics-based detainers. Their unabated practice of transferring individuals

to ICE custody has unreasonably endangered their lives and caused them injury without justification.

### **Jose Alcides Argueta Rivera**

Mr. Alcides Argueta Rivera is 35 years old. He lived in Hawthorne, California before he entered CDCR custody. Mr. Argueta Rivera works in restaurants and construction to support his 4-year-old daughter, who is a U.S. citizen.

Mr. Argueta Rivera was in the custody of CDCR for a probation violation. In mid-July 2020, he was housed at CCI-Tehachapi. At that time, Mr. Argueta Rivera was informed by his prison counselor that he had an ICE hold. A few days later, CDCR employees permitted an ICE officer to interview Mr. Argueta Rivera. Mr. Rivera agreed to the interview because he did not want to appear as though he was hiding any information. ICE asked him various questions about his family, his income, his country of origin, and his marital status.

Though Mr. Argueta Rivera's scheduled release date from CDCR was July 30, 2020, he was told by CDCR officers on July 27, 2020 that he would be released on that day. Mr. Argueta Rivera was surprised, knowing that his release date was supposed to be a few days later. Along with a group of about twenty-five other people, Mr. Argueta Rivera gathered his belongings and walked in a line towards a main entry door to the facility. Each person in the line, including Mr. Argueta Rivera, was provided with street clothes and had their photograph taken by CDCR employees. Other people in the line ahead of Mr. Argueta Rivera were released through an exit leading to a parking lot where vans pick up people released from the facility.

After CDCR employees photographed Mr. Argueta Rivera and provided him with clothes, one of the CDCR employees pulled him out of the line and told him to enter a small room inside the facility. The room contained laundry, shoes, clothes and a trash bin to dispose of old prison clothes. There were two guards blocking the doorway to make sure no one could leave the room. Mr. Argueta Rivera entered the room and changed into his street clothes.

The two guards in the doorway wore grey uniforms. They asked Mr. Argueta Rivera if he was "Jose Alcides from El Salvador." Mr. Argueta Rivera said yes. When he asked who they were, they told him they did not have to tell him. Mr. Argueta Rivera responded by saying that he would not talk or sign anything because he did not know who they were. The two men told Mr. Argueta Rivera that they worked for ICE. Mr. Argueta Rivera waited in the room for about twenty or twenty-five minutes along with two other inmates.

The guards then placed Mr. Argueta Rivera and the other two men in line again. They handcuffed Mr. Argueta Rivera and chained his waist and his legs. They took Mr. Argueta Rivera and the other men out of the facility and to a van in the parking lot.

Mr. Argueta Rivera felt very uncomfortable and disturbed by what was happening. He felt humiliated and embarrassed by being arrested by ICE's contractors. He could not look at anyone in the face.

Mr. Argueta Rivera was transferred by CDCR to ICE custody even though CDCR was aware that Mr. Argueta Rivera had been diagnosed with tuberculosis in March 2020. CDCR was also aware that Mr. Argueta Rivera has a history of liver and kidney problems and took medication for kidney pain. CDCR was also aware that Mr. Argueta Rivera possessed respiratory conditions making it difficult for him to breathe or take deep breaths.

Mr. Argueta Rivera was driven from CCI-Tehachapi by ICE contractors to an ICE office in Bakersfield, California. From the ICE office in Bakersfield, Mr. Argueta Rivera was driven to the Mesa Verde Detention Facility.

When Mr. Argueta Rivera was transferred into the Mesa Verde Detention Facility, dozens of detained individuals and staff members were suffering from COVID-19, a highly contagious virus. Mr. Argueta Rivera himself was exposed to a detained individual who tested positive for COVID-19. Mr. Argueta Rivera experienced anxiety, depression, frustration, and emotional and psychological distress while detained at the Mesa Verde Detention Facility. He was not only deprived of his liberty, locked up 24 hours a day, and robbed of his freedom, but also faced a significant risk of contracting a painful, debilitating, and deadly illness. He feared for his life.

Mr. Argueta Rivera was eventually released from Mesa Verde Detention Facility by ICE on September 23, 2020.

**Explain Why You Believe the State is Responsible for the Damage or Injury:**

The injuries suffered by Mr. Argueta Rivera and a class of similarly-situated individuals during their time in CDCR custody and arising from their transfer from CDCR custody to ICE custody were directly and proximately caused by CDCR, Governor Newsom, the CDCR Secretary, and other CDCR employees. CDCR, Governor Newsom, the CDCR Secretary, and other CDCR employees have adopted, implemented, and continue to engage in policies and practices that facilitate the transfer of individuals from CDCR custody to ICE custody upon their release from criminal custody. Those policies and practices include, but are not limited to, notifying ICE of an individual's presence in CDCR custody; providing information to ICE about an individual in CDCR custody, including name, date and place of birth, and scheduled release date; accepting detainer requests from ICE, including those in which probable cause of removability is founded upon biometrics-based checks of databases; placing "ICE holds" in an individual's Central File and other CDCR records; permitting ICE to interview individuals in CDCR custody, and facilitating those interviews by transferring individuals among CDCR facilities; coordinating with ICE to release individuals from CDCR facilities up to several days in advance of their scheduled release date; transferring individuals among CDCR facilities to permit ICE or its private contractor G4S to take custody of them; processing an individual for release to ICE or G4S; holding an individual in a secure area on CDCR premises until ICE or G4S arrives to take custody of the individual; and physically assisting ICE or G4S to take custody of the individual.



CDCR, Governor Newsom, the CDCR Secretary, and CDCR employees continue the policy and practice of transferring individuals from CDCR custody to ICE custody at the time of release even though doing so exposes these individuals to a greater risk of contracting COVID-19 than if they were released from criminal custody. Continuing to transfer these individuals violates their substantive due process rights under the Fifth and Fourteenth Amendments to the Constitution.

The actions of CDCR, Governor Newsom, the CDCR Secretary, and other CDCR employees constitute false imprisonment, a violation of the Bane Act, and a violation of the rights of Mr. Argueta Rivera and similarly-situated individuals under the Fourth Amendment of the Constitution and Article I Section 13 of the California State Constitution because they facilitated an arrest by ICE (through its private contractor G4S) made without lawful privilege. ICE's use of a private contractor G4S to arrest Mr. Argueta Rivera and similarly-situated individuals violates the Immigration and Nationality Act and implementing regulations. 8 U.S.C. § 1357(a); 8 C.F.R. § 287.5(c); 8 C.F.R. § 287.5(e)(3).

Governor Newsom, the CDCR Secretary, and other CDCR employees were aware that contractors hired by ICE do not have lawful authority to take custody of people transferred from CDCR. Legislation the Governor vetoed put them on notice of the unlawfulness of contractors taking custody of people for ICE.

The actions of CDCR, Governor Newsom, the CDCR Secretary, and other CDCR employees violate the rights of Mr. Argueta Rivera and similarly-situated individuals under the Equal Protection Clause of the Fourteenth Amendment of the Constitution and Article I Section 7 of the California State Constitution because they constitute national origin-based discrimination.