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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF ALAMEDA**

11 ASIAN PRISONER SUPPORT  
12 COMMITTEE; ROOT & REBOUND; ROTH  
13 CHAN; ANOUTHINH "CHOY"  
PANGTHONG,

14 *Plaintiffs-Petitioners,*

15 v.

16 CALIFORNIA DEPARTMENT OF  
17 CORRECTIONS AND REHABILITATION;  
18 JEFF MACOMBER, Secretary of the  
California Department of Corrections and  
Rehabilitation,

19 *Defendants-Respondents.*  
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CASE NO. 23CV031986

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF AND  
PETITION FOR WRIT OF  
MANDATE**

1. Taxpayer Claim  
(Cal. Const., art. I § 7(a))
2. Taxpayer Claim  
(Gov. Code, § 11135)
3. Taxpayer Claim  
(Gov. Code, § 7284.10(b))
4. Writ of Mandate  
(Cal. Const., art. I, § 7(a))
5. Writ of Mandate  
(Gov. Code, § 11135)
6. Writ of Mandate  
(Gov. Code, § 7284.10(b))

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1 **INTRODUCTION**

2 1. Defendant California Department of Corrections and Rehabilitation  
3 (“CDCR”) operates a discriminatory immigration-enforcement system. CDCR’s policy  
4 is to refer all “foreign-born” people in its custody to U.S. Immigration and Customs  
5 Enforcement (“ICE”)—including U.S. citizens and lawful residents. Pursuant to this  
6 policy, CDCR systematically refers people to ICE because of their actual or perceived  
7 national origin, ethnicity, and other prohibited classifications. CDCR then denies them  
8 the opportunity to live in certain lower-security facilities, participate in rehabilitative  
9 programming, and earn credits toward early release, in violation of the California  
10 Constitution, Government Code section 11135, and the California Values Act (Stats.  
11 2017, ch. 17.25). This case challenges these unconstitutional and unlawful CDCR  
12 policies and practices.

13 2. Plaintiff Anouthinh “Choy” Pangthong is a U.S. citizen who was born in a  
14 refugee camp in Thailand. His family immigrated to the United States when he was a  
15 child, and he became a U.S. citizen when his mother became a naturalized citizen in  
16 1997. In 1998, Mr. Pangthong entered CDCR custody. Even though Mr. Pangthong was  
17 a U.S. citizen, CDCR subjected him to unfavorable treatment because of where he was  
18 born. On information and belief, CDCR placed a potential immigration hold (“Potential  
19 Hold”)<sup>1</sup> on Mr. Pangthong in its system and referred him to federal immigration officials  
20 because of his national origin. Federal immigration officials then placed a detainer on  
21 Mr. Pangthong and CDCR entered an Actual Hold on Mr. Pangthong in its records. Even  
22 though he was a U.S. citizen, Mr. Pangthong spent nearly 19 years in CDCR custody  
23

24 \_\_\_\_\_  
25 <sup>1</sup> ICE sometimes requests that a law enforcement agency, such as CDCR, hold a  
26 particular individual at the conclusion of that individual’s detention and transfer custody  
27 of the individual to ICE. When ICE makes this request, CDCR places an actual  
28 immigration hold (“Actual Hold”) on the individual. CDCR places a Potential Hold on  
individuals without ICE’s involvement, but the Potential Hold functions similarly to an  
Actual Hold. CDCR has had a version of the referral and Potential Hold policy in place  
since 1992.

1 facing the threat of wrongful deportation. He was able to remove the hold shortly before  
2 his parole only with the assistance of an immigration attorney.

3 3. Brian Bukle is also a naturalized U.S. citizen. When he entered CDCR  
4 custody in 2018, CDCR placed a Potential Hold on Mr. Bukle and referred him to ICE  
5 because he was born outside of the United States. CDCR did so despite Mr. Bukle's  
6 insistence that he is a U.S. citizen *and CDCR's own records indicating the same*. After  
7 receiving CDCR's referral, ICE issued a detainer requesting that CDCR transfer Mr.  
8 Bukle to ICE custody upon completion of his sentence. Despite the evidence of Mr.  
9 Bukle's U.S. citizenship, CDCR accepted the detainer request and entered an Actual  
10 Hold against him in its system. When Mr. Bukle's term of imprisonment concluded in  
11 June 2020, rather than releasing Mr. Bukle to spend Father's Day with his minor son,  
12 CDCR transferred him to ICE custody. As a direct result of CDCR's discriminatory  
13 policies and practices, ICE detained Mr. Bukle for 36 days, during which time ICE  
14 employees repeatedly ignored the evidence Mr. Bukle presented of his U.S. citizenship  
15 and urged him to sign paperwork agreeing to deportation. Finally, in response to a  
16 request from an immigration lawyer, ICE verified his U.S. citizenship and released him.

17 4. Mr. Pangthong and Mr. Bukle are not alone. Each year, without ICE's  
18 direction and on its own initiative, CDCR identifies hundreds of people in its custody  
19 whom it believes were born outside of the United States. It frequently makes these  
20 identifications based on perceived race or ethnicity. The foreign birth or perceived  
21 foreign birth of a person in custody then triggers a pair of facially discriminatory policies  
22 and practices. First, CDCR places a Potential Hold on all persons classified as foreign-  
23 born, regardless of whether they are U.S. citizens or lawful residents, or whether they are  
24 deportable. Second, CDCR refers all such persons to ICE for investigation and  
25 deportation or other enforcement actions.

26 5. Many of the people CDCR refers to ICE each year are non-deportable lawful  
27 residents or U.S. citizens. There are over 28 million U.S. citizens who were not born in  
28 the United States and millions more residents who were born abroad but are authorized to

1 live in the United States under federal law. Roughly 27% of Californians are foreign-  
2 born, including nearly 5.8 million naturalized U.S. citizens and more than 2 million  
3 individuals with lawful immigration status. Countless more were born in this country of  
4 immigrant parents. CDCR’s unlawful policies put U.S. citizens, lawful permanent  
5 residents, and other persons who are not deportable at risk of mistaken or unlawful  
6 immigration enforcement, and force them to expend resources attempting to prove their  
7 citizenship or lawful status to avoid improper detention by ICE—all because of these  
8 individuals’ national origin, race, or ethnicity.

9         6. CDCR also denies important housing and rehabilitation opportunities to  
10 persons in its custody on the basis of their perceived foreign birth. Plaintiff Roth Chan, a  
11 U.S. citizen who was born and raised in California, entered CDCR custody in 2021.  
12 Despite her U.S. citizenship, CDCR perceived Ms. Chan to be foreign-born, placed a  
13 Potential Hold on her, and, on information and belief, referred her to ICE. Based solely  
14 on the Potential Hold, CDCR denied Ms. Chan placement in a transitional custody  
15 program that allows female individuals to engage in enhanced rehabilitation programs  
16 during their term of imprisonment. By denying persons like Ms. Chan placement in  
17 lower-security facilities and/or access to certain educational and rehabilitative  
18 programming while in prison on the basis of a Potential Hold, CDCR denies those  
19 individuals opportunities to earn credits toward early release and successfully reintegrate  
20 with their communities.

21         7. Plaintiffs bring this action to vindicate the fundamental rights guaranteed to  
22 every person in California to be free from unlawful discrimination. CDCR has  
23 implemented and maintained at least three unlawful policies based on discriminatory  
24 classifications that violate California law:

- 25             (a) **Potential Hold Policy:** The Potential Hold is a concept CDCR  
26             created out of whole cloth that has no basis in state or federal law.  
27             Since at least 2005, CDCR has placed Potential Holds on individuals  
28             whom it perceives to be born outside of the United States, including

1 people who were, in fact, born in the United States, like Ms. Chan.  
2 CDCR subjects those with Potential Holds to discriminatory treatment  
3 intended to facilitate their transfer to ICE custody. The Potential Hold  
4 classification results in treatment equivalent to ICE having requested  
5 an Actual Hold, which means that people in custody with Potential  
6 Holds are denied opportunities that are available to other incarcerated  
7 individuals merely because of their actual or perceived national origin.  
8 CDCR policy prohibits placement of incarcerated persons with  
9 Potential Holds in certain lower security facilities or in certain lower  
10 security Custody Designations. This CDCR policy therefore limits  
11 access by incarcerated persons with Potential Holds to educational  
12 and rehabilitative programing that occurs only in minimum-security  
13 environments.

14 (b) ***ICE Notification Policy:*** Along with the Potential Hold Policy,  
15 CDCR sends lists of all “foreign-born”—and perceived foreign-  
16 born—individuals in its custody to ICE without regard to whether  
17 they are U.S. citizens or otherwise not deportable. The purported goal  
18 of this policy is to allow ICE to investigate their immigration status,  
19 decide whether to interview the person, and possibly issue a detainer  
20 request to CDCR to facilitate their eventual deportation. In practice,  
21 ICE does not investigate these referrals until an individual is near to  
22 the time of release, which means that the Potential Hold may last  
23 months or years without review. In the meantime, even without ICE  
24 having placed an immigration hold or requesting the individual’s  
25 transfer to ICE custody, CDCR presumes deportability and takes  
26 actions to facilitate the transfer, resulting in an ongoing threat of  
27 wrongful immigration enforcement and the deprivation of important  
28 benefits while in CDCR custody.

1 (c) ***Discriminatory Actual Hold Policy***: Like individuals with Potential  
2 Holds, CDCR also limits those with an actual ICE detainer request  
3 (those with an Actual Hold) from placement in certain lower security  
4 facilities, participation in rehabilitative programming offered in such  
5 environments, and higher rates of credit-earning due to minimum  
6 security status, based on immigration status.

7 8. The Potential Hold Policy and the ICE Notification Policy violate  
8 constitutional and statutory prohibitions against unlawful discrimination. Specifically,  
9 the equal protection clause of the California Constitution, article I, section 7(a), prohibits  
10 state classifications based on national origin, race, and ethnicity, among other categories,  
11 that do not satisfy strict scrutiny. Government Code section 11135 further provides that  
12 “[n]o person in the State of California shall, on the basis of sex, race, color, religion,  
13 ancestry, national origin, ethnic group identification . . . be unlawfully subjected to  
14 discrimination under, any program or activity that is conducted, operated, or administered  
15 by the state or by any state agency . . . .”

16 9. The equal protection clause of the California Constitution prohibits law  
17 enforcement from treating people differently on the basis of suspect classifications, such  
18 as national origin. (Cf. *Parada v. Anoka Cnty.* (8th Cir. 2022) 54 F.4th 1016, 1020  
19 (*Parada*) [holding that a County jail’s policy of referring people in its custody born  
20 outside of the United States to ICE “is a classic example of national-origin  
21 discrimination” because “[o]n its face, it treats people differently depending on where  
22 they were born”]; see *Legg v. D.O.J.* (2022) 81 Cal.App.5th 504, 510 [“The state  
23 constitutional guarantee [of equal protection] is independent of the federal guarantee, but  
24 . . . applied identically.”].) National origin (or perceived national origin) is not a  
25 constitutionally permissible basis for subjecting individuals to immigration investigation  
26 and potential enforcement. (*Parada*, at p. 1020 [county jail’s policy of referring  
27 individuals to ICE was subject to strict scrutiny, and violated the equal protection clause  
28 of the federal Constitution].)

1           10. The equal protection clause of the California Constitution also prohibits law  
2 enforcement from treating people differently on the basis of race or ethnicity. (See *In re*  
3 *Morales* (2013) 212 Cal.App.4th 1410, 1426 [holding that CDCR’s “restrict[ions] [on]  
4 inmate movement and activities based on an inmate’s classification as Black, White,  
5 Northern Hispanic, Southern Hispanic, or Other [are] racial classification[s] subject to  
6 strict scrutiny” and finding that those restrictions were not narrowly tailored to serve a  
7 compelling governmental interest].) On information and belief, CDCR routinely  
8 classifies (and misidentifies) persons in custody as foreign-born on the basis of an  
9 individual’s actual or perceived race or ethnicity. For example, Ms. Chan was born in the  
10 United States; nevertheless, on information and belief, CDCR determined that she was  
11 foreign-born based on her perceived race or ethnicity and placed a Potential Hold on her.

12           11. The Potential Hold Policy and the Discriminatory Actual Hold Policy also  
13 unlawfully bar incarcerated persons from certain lower security facilities and limit their  
14 educational, rehabilitative, and credit-earning opportunities on the basis of citizenship or  
15 immigration status, in violation of the California Values Act (Gov. Code, §7284.10, subd.  
16 (b) (hereafter Gov. Code, §7284.10(b)). Government Code section 7284.10, subdivision  
17 (b)(1) (hereafter Government Code section 7284.10(b)(1)), prohibits CDCR from  
18 “[r]estrict[ing] access to any in-prison educational or rehabilitative programming, or  
19 credit-earning opportunity on the sole basis of citizenship or immigration status.”  
20 Government Code section 7284.10, subdivision (b)(2) (hereafter Government Code  
21 section 7284.10(b)(2)), also prohibits CDCR from “[c]onsider[ing] citizenship and  
22 immigration status as a factor in determining a person’s custodial classification level.”  
23 By using national origin or perceived national origin to impute citizenship status—i.e., to  
24 identify non-citizens and naturalized citizens—CDCR restricts access to in-prison  
25 educational or rehabilitative programing or credit-earning opportunities on the sole basis  
26 of citizenship or immigration status. It also considers citizenship and immigration status  
27 as a factor in determining a person’s custodial classification level under the Potential  
28 Hold Policy. Because an Actual Hold is placed on the basis of an ICE detainer request,



1 CDCR's Discriminatory Actual Hold Policy likewise causes persons to be restricted from  
2 in-prison educational or rehabilitative programming or credit-earning opportunities on the  
3 sole basis of citizenship or immigration status and considers citizenship and immigration  
4 status as a factor in determining a person's custodial classification level.

5 12. Defendant CDCR illegally expends public funds carrying out its unlawful  
6 Potential Hold Policy, ICE Notification Policy, and Discriminatory Actual Hold Policy.  
7 Part of CDCR's budget comes from sales taxes paid by Plaintiffs, and each year CDCR  
8 employees spend numerous hours carrying out these unlawful policies. As taxpayers, the  
9 plaintiffs have standing under Code of Civil Procedure section 526a to bring this action to  
10 prevent the unlawful expenditure of their tax dollars. Plaintiffs also have public interest  
11 standing to petition for a writ of mandate under Code of Civil Procedure section 1085. In  
12 addition, Ms. Chan has beneficial interest standing.

13 13. Unless the Court intervenes to declare these policies unlawful and bring  
14 them to a halt, incarcerated persons will continue to be unlawfully referred to ICE, denied  
15 opportunities to engage in rehabilitative programs, and the state will continue to waste  
16 valuable public resources implementing these unlawful policies.

### 17 JURISDICTION AND VENUE

18 14. Jurisdiction is proper pursuant to article VI, section 10 of the Constitution of  
19 California and Code of Civil Procedure section 410.10.

20 15. Defendants have waived sovereign immunity for purposes of this suit  
21 pursuant to Code of Civil Procedure section 526a, which provides for an action by a  
22 resident or corporation who is assessed or liable to pay a tax that funds an agency to  
23 obtain a judgment restraining said agency's illegal expenditure of funds.

24 16. The Court has authority to issue an injunction pursuant to Code of Civil  
25 Procedure sections 525, 526, subdivision (a), and 526a.

26 17. The Court has authority to issue declaratory relief pursuant to Code of Civil  
27 Procedure section 526a. (See *Love v. Keays* (1971) 6 Cal.3d 339, 343].)

28 18. A substantial, actual, and continuing controversy exists between the parties.

1 19. Venue is proper in this county pursuant to Code of Civil Procedure section  
2 401 because the Attorney General of California maintains an office in Alameda County,  
3 California.

4 **PARTIES**

5 **Plaintiffs-Petitioners**

6 20. **Asian Prisoner Support Committee** (“APSC”) provides direct support to  
7 currently and formerly incarcerated Asian and Pacific Islanders (API) by facilitating  
8 Ethnic Studies programs in prisons, providing community-based re-entry services, and  
9 organizing anti-deportation campaigns. APSC is based in Alameda County. APSC is  
10 fiscally sponsored by Chinese for Affirmative Action, a nonprofit 501(c)(3) organization  
11 with offices in San Francisco and Sacramento. APSC has paid sales taxes in California  
12 within the last year that fund the State of California.

13 21. **Root & Rebound** is a nonprofit organization that provides support to people  
14 who are formerly or currently convicted or incarcerated, including by assisting people in  
15 securing employment and housing and re-uniting their families upon re-entry from  
16 prison. Root & Rebound is headquartered in Alameda County and has paid sales taxes in  
17 California within the last year that fund the State of California.

18 22. **Roth Chan** is a U.S. citizen born in San Joaquin County, California.  
19 Despite the fact that Ms. Chan is U.S.-born and a U.S. citizen, CDCR placed a Potential  
20 Hold on her, denied her access to rehabilitative programming, and referred her to ICE.  
21 Ms. Chan has attempted to use CDCR’s internal grievance process to eliminate her  
22 Potential Hold, but CDCR has refused to remove the Potential Hold. She is currently  
23 detained in CDCR custody at Central California Women’s Facility (“CCWF”). Ms. Chan  
24 has paid sales taxes in California within the last year that fund the State of California.

25 23. **Anouthinh “Choy” Pangthong** is a U.S. citizen born in a refugee camp in  
26 Thailand. His family immigrated to the U.S. when he was a child, and he became a U.S.  
27 citizen when his mother became a naturalized citizen in 1997. In 1998, Mr. Pangthong  
28 was transferred from the California Youth Authority to CDCR custody, and, on

1 information and belief, CDCR notified U.S. Immigration and Naturalization Services  
2 (“USINS”)—the predecessor agency to ICE—about Mr. Pangthong, even though Mr.  
3 Pangthong was already a U.S. citizen at this time. Mr. Pangthong spent nearly 19 years  
4 in CDCR custody fighting to prove his citizenship and was finally able to do so with the  
5 assistance of an immigration attorney shortly before his release. Mr. Pangthong has paid  
6 sales taxes in California within the last year that fund the State of California.

### 7 **Respondents-Defendants**

8 24. **California Department of Corrections and Rehabilitation** is an agency of  
9 the State of California responsible for the operation of the California state prisons and  
10 parole systems. CDCR operates an unlawful secondary immigration enforcement system  
11 by systematically identifying people in its custody it suspects of being deportable based  
12 on national origin, ethnicity, and other prohibited classifications and referring them to  
13 ICE for investigation and removal proceedings. CDCR operates educational and  
14 rehabilitative programming for persons in its custody, but excludes people from that  
15 programming based on national origin, ethnicity, and other prohibited classifications, as  
16 well as citizenship and immigration status.

17 25. **Jeff Macomber** is Secretary of CDCR. In this capacity, Defendant  
18 Macomber is responsible for the administration of CDCR. Defendant Macomber has  
19 direct authority over CDCR’s policies, practices, and procedures and is responsible for  
20 ensuring that they comply with all relevant law. He is sued in his official capacity.

### 21 **FACTUAL ALLEGATIONS**

22 26. California is home to the largest immigrant population in the country and is  
23 one of the country’s most racially and ethnically diverse states. Yet CDCR—the state’s  
24 largest agency, with a proposed 2023-2024 budget of \$14.5 billion—spends an immense  
25 amount of taxpayer-funded resources to operate an illegal state immigration  
26 enforcement system that harms Californians and their families, through the Potential  
27 Hold, ICE Notification, and Discriminatory Actual Hold Policies.

1 **I. CDCR Has Sharply Circumscribed Immigration Enforcement Authority.**

2 27. Immigration enforcement is a uniquely federal power in which state  
3 agencies like CDCR have a sharply circumscribed role. (See generally *Arizona v. United*  
4 *States* (2012) 567 U.S. 387.)

5 28. When ICE seeks to arrest a person in CDCR custody, ICE issues a DHS I-  
6 247A “immigration detainer” in the person’s name. The ICE officer completing the I-  
7 247A asserts probable cause to believe the targeted individual is deportable. The I-247A  
8 requests that CDCR notify ICE of the person’s release date and detain them for up to 48  
9 hours beyond their release time to allow ICE to arrest them. At times, ICE also sends a  
10 DHS I-200 “administrative arrest warrant,” which largely duplicates the I-247 detainer.

11 29. Under state and federal law, CDCR is permitted, but not required, to comply  
12 with ICE detainers and administrative warrants.

13 30. CDCR may *not* discriminate against persons in its custody on the basis of  
14 national origin or other protected characteristics, nor discriminate in the provision of  
15 housing and programming benefits on the basis of citizenship or immigration status.

16 **II. CDCR Classifies Persons in Custody Based on Perceived Foreign Birth and**  
17 **Voluntarily Places a “Potential Hold” on Them.**

18 31. When CDCR takes custody of an individual at a Reception Center, CDCR  
19 employees complete several forms, including a Cumulative Case Summary (CDC Form  
20 188-L) and a summary of the incarcerated person’s “social factors,” including “race,”  
21 “ethnic” [sic], “country,” “date of birth,” “U.S. citizenship,” “country of citizenship,”  
22 “primary language,” residential history, employment history, and identification numbers  
23 (such as social security number, CDC number, etc.). As a part of the intake process,  
24 CDCR attempts to determine a person’s place of birth.<sup>2</sup>

25 \_\_\_\_\_  
26 <sup>2</sup> Penal Code section 5025 purports to authorize CDCR to make certain  
27 determinations about individuals’ citizenship, national origin, and other characteristics.  
28 In this lawsuit, Plaintiffs do not challenge CDCR’s authority to collect information and  
make determinations about the persons in its custody. Rather, Plaintiffs challenge CDCR

1           32. Pursuant to the Potential Hold Policy, CDCR classifies all individuals it  
2 believes were born outside the U.S. as “foreign born” and places a Potential Hold on  
3 them. CDCR invented the concept of a Potential Hold, which has no meaning under  
4 federal immigration law. As a result of CDCR’s constructed internal classification  
5 system based on actual or perceived place of birth, the agency routinely places Potential  
6 Holds on foreign-born U.S. citizens.<sup>3</sup> Furthermore, many foreign-born non-citizens are  
7 non-deportable lawful permanent residents. Therefore, even the combination of foreign  
8 birth and foreign citizenship does not itself warrant a belief that the individual is  
9 deportable.

10           33. CDCR’s unilateral placement of Potential Holds on incarcerated people can  
11 happen as early as intake. However, ICE does not investigate individuals referred to it by  
12 CDCR until a month or so before their release date. Individuals wrongly classified by  
13 CDCR regularly languish for years with Potential Holds unless and until ICE finally  
14 investigates the referral and informs CDCR that they will not place an Actual Hold.  
15 CDCR is thus aware that the Potential Hold will last indefinitely, resulting in the  
16 unconstitutional denial of custodial in-prison benefits on the basis of an individual’s  
17 national origin, and CDCR cannot justify its policy as merely an interim classification  
18 until ICE makes a determination.

19           34. CDCR routinely misclassifies persons born in the United States as born  
20 abroad. CDCR does so on internal forms by indicating a “country” other than the United  
21 States, labeling an individual as a “non-citizen,” and/or indicating that they have a  
22 “country of citizenship” other than the United States. On information and belief, CDCR

23 \_\_\_\_\_  
24 actions that unlawfully discriminate based on those determinations. Moreover, even if  
25 the statute purported to authorize the actions Plaintiffs challenge here, the legislature  
26 cannot authorize CDCR to discriminate in a manner that the California Constitution  
forbids.

27 <sup>3</sup> There are several ways that foreign-born individuals can become U.S. citizens:  
28 (1) “acquisition” of U.S. citizenship through a parent’s U.S. citizenship,  
(2) “naturalization” after migration to the United States, and (3) “derivation” of U.S.  
citizenship by a child through a parent’s naturalization.

1 misidentifies persons' place of birth, country, citizenship status, and country of  
2 citizenship because of their actual or perceived race, ethnicity, ethnic group  
3 identification, color, ancestry, national origin, or indicia of national origin such as accent,  
4 language, or name. Having misclassified persons born in the United States as born  
5 abroad, CDCR places Potential Holds on these U.S.-born citizens and subjects them to  
6 the ICE Notification Policy and Potential Hold Policy.

7 35. As described in more detail below, *infra* Sections III to IV, CDCR refers  
8 persons subject to a Potential Hold to ICE for investigation and removal and denies them  
9 credit-earning opportunities and rehabilitative programming while in CDCR custody.

10 **III. CDCR Devotes Enormous Resources Referring “Foreign-Born” Persons to**  
11 **ICE and Seeking ICE Investigation and Enforcement Against Them.**

12 36. Pursuant to the ICE Notification Policy, CDCR sends lists of all supposedly  
13 foreign-born individuals to ICE on a monthly or quarterly basis. CDCR’s Department  
14 Operations Manual (“DOM”) expressly directs CDCR Correctional Counselors to “refer  
15 all inmates, including parole violators, who are foreign born, to the USINS for  
16 deportation hold determination[s] by completing a CDC Form 850, Detainer Summary.”  
17 (Cal. Dept. of Corrections and Rehabilitation, Dept. Operations Manual, Chapter 6—  
18 Adult Classification (Jan. 1, 2022) § 61010.4, p. 503.) This policy on its face  
19 discriminates against persons in CDCR custody on the basis of national origin. Many  
20 persons in CDCR custody born outside of the United States are U.S. citizens or lawful  
21 residents who are not deportable.

22 37. Pursuant to the ICE Notification Policy, without direction from ICE, on the  
23 basis of protected characteristics, CDCR takes steps to encourage ICE to engage in  
24 immigration enforcement against people in CDCR custody, including U.S. citizens:

- 25 (a) CDCR alerts ICE to people in its custody whom CDCR has  
26 unilaterally subjected to a Potential Hold;
- 27 (b) CDCR provides ICE “packets” of information gathered by CDCR  
28 personnel containing biographical and identifying information,

1 sometimes confirming their U.S. citizenship, and criminal history  
2 information regarding persons it has subjected to a Potential Hold;

3 (c) CDCR contacts ICE to encourage officers to interview people on a  
4 Potential Hold prior to their release dates;

5 (d) CDCR contacts ICE to encourage officers to formally issue detainer  
6 requests for persons it has subjected to a Potential Hold; and

7 (e) CDCR keeps ICE officers apprised of the release date of persons it  
8 has subjected to a Potential Hold.

9 38. On information and belief, as a part of its ICE Notification Policy, CDCR  
10 routinely refers U.S. citizens born in the United States to ICE on the basis of race,  
11 ethnicity, ethnic group identification, color, ancestry, national origin, or indicia of  
12 national origin such as accent, language, or name.

13 39. In one instance, a CDCR Case Records Technician notified ICE of an  
14 individual who was listed in CDCR's own records as a "Native-Born" citizen but whose  
15 race and ethnicity were listed as "Hispanic."

16 40. CDCR also singles out people born or suspected to be born outside of the  
17 United States for disfavored treatment by proactively seeking to assist ICE by holding  
18 people beyond their sentence while urging ICE to investigate them for possible  
19 deportation. For example, on August 8, 2022, a CDCR officer emailed an ICE officer,  
20 "[i]nquiring on an inmate that is overdue to be released to verify whether he is wanted by  
21 ICE," based on that individual's foreign birth.

22 41. On information and belief, CDCR employees spend agency time persistently  
23 notifying ICE of individuals in its custody and seeking the issuance of detainers, even  
24 when ICE has decided to take no action regarding certain individuals. In one example,  
25 CDCR sent information regarding an individual in custody to ICE in May 2022. When  
26 CDCR officers did not hear back from ICE, they followed up in July. ICE replied a few  
27 days later, stating that they would not be taking action against the individual. However,  
28

1 just three weeks later, CDCR again followed up regarding the same individual asking if  
2 ICE would place a detainer as the individual's release date was approaching in ten days.

3 42. CDCR's Potential Hold and ICE Notification Policies risk wrongfully  
4 transferring U.S. citizens, like Plaintiffs Pangthong and Chan, and lawful permanent  
5 residents to ICE custody. Each year, pursuant to its ICE Notification Policy, CDCR  
6 refers many U.S.-born citizens, naturalized citizens, and non-deportable lawful residents  
7 to ICE. Upon information and belief, CDCR is aware that after it refers these foreign-  
8 born individuals to ICE, ICE routinely mistakenly identifies these individuals as  
9 deportable and seeks their consent to deportation or places detainer requests on them.  
10 CDCR routinely honors these requests and facilitates a transfer of custody to ICE of non-  
11 deportable persons in its custody, even when it has reason to believe they are not  
12 deportable, such as information showing they are a U.S. citizen, as in Mr. Bukle's case.  
13 In doing so, CDCR classifies people in its custody on the basis of national origin, or  
14 perceived national origin, and singles them out for unfavorable treatment.

15 43. CDCR placed and continues to maintain a Potential Hold on Plaintiff Chan,  
16 a U.S. citizen born in the United States. Although Ms. Chan is a U.S.-born citizen whose  
17 family immigrated to the United States from Cambodia, CDCR officials documented Ms.  
18 Chan as "Mexican." On information and belief, CDCR imposed the Potential Hold on  
19 Ms. Chan on the basis of her actual or perceived race, ethnicity, ethnic group  
20 identification, color, ancestry, national origin, or indicia of national origin. On  
21 information and belief, CDCR referred Ms. Chan to ICE. CDCR has denied Ms. Chan's  
22 attempts to eliminate the Potential Hold. On January 20, 2023, in the latest such attempt,  
23 Ms. Chan submitted a grievance to the CCWF Office of Grievances requesting that the  
24 Potential Hold be eliminated based on her U.S. citizenship. The next day, the office of  
25 grievances "denied" her claim because ICE had still not responded to CDCR's request for  
26 a "Potential Detainer Investigation" of Ms. Chan. As described below, *infra* Section  
27 IV.C, CDCR has also denied Ms. Chan placement in a community reentry program based  
28 on the Potential Hold.



1 44. CDCR placed and continues to maintain a Potential Hold on J.G., a U.S.  
2 citizen who was born in El Salvador. Despite evidence that J.G. is a U.S. citizen, CDCR  
3 placed the Potential Hold on him in early 2017, shortly after his entry into CDCR  
4 custody. J.G. has asked CDCR employees to eliminate the Potential Hold based on his  
5 U.S. citizenship, but they have not done so. In one meeting, a CDCR counselor noted  
6 J.G.'s foreign birth and stated that ICE would "deal with" his U.S. citizenship. On  
7 information and belief, CDCR placed a Potential Hold on J.G. on the basis of perceived  
8 ethnicity and national origin. On information and belief, CDCR referred J.G. to ICE.

9 45. CDCR placed and continues to maintain a Potential Hold on Maria  
10 Hernandez, a U.S. citizen born in the United States. Ms. Hernandez has asked CDCR  
11 employees to eliminate the Potential Hold based on her U.S. citizenship, but they have  
12 not done so. On information and belief, CDCR assumed that Ms. Hernandez was not  
13 born in the United States and placed a Potential Hold on the basis of actual or perceived  
14 race, ethnicity, ethnic group identification, color, ancestry, national origin, or indicia of  
15 national origin. On information and belief, CDCR referred Ms. Hernandez to ICE.

16 46. CDCR placed a Potential Hold on A.R., a U.S. citizen who was born in  
17 Mexico. He acquired citizenship through his U.S. born mother and received his  
18 certificate of citizenship as a young child. However, a CDCR counselor noticed his  
19 foreign birth and placed a Potential Hold on A.R. On information and belief, CDCR  
20 referred A.R. to ICE. For two years, A.R. repeatedly told CDCR officials that he was a  
21 U.S. citizen. While two CDCR counselors acknowledged his U.S. citizenship, they told  
22 him that the Potential Hold was now "out of [CDCR's] hands," despite the fact that  
23 CDCR placed and maintained the Potential Hold entirely of its own volition and Potential  
24 Holds have no meaning in federal immigration law. A.R.'s mother repeatedly called  
25 CDCR and ICE officials, pleading with both to remove the Potential Hold on her son.  
26 Years later, ICE finally interviewed A.R. and told CDCR that they would not be taking  
27 action on A.R. CDCR then dropped the Potential Hold.

1 47. CDCR placed a Potential Hold on Modesto Alcala, a naturalized U.S. citizen  
2 who was born in Mexico. Mr. Alcala reached out to multiple CDCR counselors to get the  
3 Potential Hold lifted but was repeatedly ignored or directed to other people. On  
4 information and belief, CDCR referred Mr. Alcala to ICE. After a year of pleading with  
5 CDCR officials to remove the Potential Hold, Mr. Alcala was able to contact an attorney,  
6 who sent ICE a letter and a copy of Mr. Alcala’s U.S. passport. ICE then instructed  
7 CDCR to drop the Potential Hold.

8 48. CDCR placed a Potential Hold on T.T., a U.S. born citizen, who was  
9 formerly incarcerated by CDCR. Every year, CDCR counselors asked him about his  
10 place of birth and citizenship status. He always repeated that he was born in the United  
11 States and was a U.S. citizen. Counselors would regularly respond, “Are you sure you  
12 are a United States citizen?” Despite T.T.’s consistent and unwavering assertions of  
13 citizenship, CDCR referred him to ICE, who called him a year before his release. T.T.  
14 informed the ICE official that he was a U.S. citizen, and ICE finally communicated with  
15 CDCR that they would take no further action regarding T.T. On information and belief,  
16 CDCR placed a Potential Hold on T.T. and referred him to ICE on the basis of his  
17 perceived national origin, race or ethnicity.

18 **IV. CDCR Unlawfully Relies Upon Potential and Actual Holds to Restrict**  
19 **Individuals’ Access to Programming and Lower Custody Classifications.**

20 49. CDCR asserts that its mission is, “To facilitate the successful reintegration  
21 of the individuals in our care back to their communities equipped with the tools to be  
22 drug-free, healthy, and employable members of society by providing education,  
23 treatment, rehabilitative, and restorative justice programs, all in a safe and humane  
24 environment.” By denying community reentry opportunities and otherwise limiting  
25 credit-earning and programming opportunities based on Potential and Actual Holds,  
26 CDCR undermines its stated rehabilitative mission—and does so illegally.

27 50. Because Potential Holds are based on national origin and/or other prohibited  
28 classifications, CDCR violates the equal protection clause of the California Constitution

1 and Government Code section 11135 by relying upon these protected characteristics to  
2 deny incarcerated people access to reentry opportunities and other programming for  
3 which they would otherwise be eligible. The California Values Act likewise prohibits  
4 CDCR’s reliance on Actual Holds for the same purpose, as such reliance is based on  
5 “citizenship or immigration status.” (Gov. Code, § 7284.2, subd. (b)(1).) As CDCR uses  
6 national origin to impute status as a non-citizen or naturalized citizen (i.e., citizenship  
7 status) for the purpose of Potential Holds, CDCR’s reliance on Potential Holds is likewise  
8 based on “citizenship or immigration status” as prohibited by the California Values Act.

9 **A. The Impact of Potential and Actual Holds on Housing**  
10 **Classifications.**

11 51. CDCR’s housing classification determines an incarcerated person’s physical  
12 environment while imprisoned and their access to certain programming. “Housing  
13 Security Level” determines the type of facility where a person will be housed while in  
14 prison, while “Custody Designation” determines where a person may go within that  
15 facility during the day and the level of supervision to which they will be subjected.  
16 However, special factors known as “Administrative Determinants,” which include the  
17 existence of a Potential or Actual Hold, alter the housing classification.

18 52. The housing classification process begins at intake, when a CDCR employee  
19 completes a Classification Score Sheet for each newly incarcerated person. That yields a  
20 points-based Classification Score based on: (1) age at first arrest, (2) age at time of  
21 assessment, (3) term length, (4) gang membership, (5) number of prior incarcerations,  
22 and (6) behavior during prior incarcerations. CDCR uses the resulting Classification  
23 Score to assign a Housing Security Level and a Custody Designation.

24 53. CDCR designates each of its camps, facilities, or areas within a facility a  
25 Housing Security Level based on its physical security and housing capability. Housing  
26 Security Levels range from the lowest level of security, Level I, to the highest level of  
27 security, Level IV.

1           54. CDCR also assigns incarcerated persons a Custody Designation to establish  
2 where an incarcerated person will be housed and assigned (whether in a cell or dormitory  
3 on facility grounds or in a Conservation Camp, or Minimum Support Facility), and the  
4 level of staff supervision the incarcerated person will receive. There are six custody  
5 designations, from greatest supervision to least supervision: (1) Maximum, (2) Close,  
6 (3) Medium A, (4) Medium B, (5) Minimum A, and (6) Minimum B. Custody  
7 Designations Medium B through Minimum B permit work outside a facility’s security  
8 perimeter.

9           55. Programs allowing an incarcerated person to live outside the main security  
10 perimeter of a prison require a Custody Designation of Minimum B. These include:

- 11                   (a) Minimum Support Facility (“MSF”): This is an in-prison  
12 facility outside of the main security perimeter of the  
13 prison. Incarcerated persons in MSFs provide support to prison  
14 operations and staff essential functions, such as kitchens and  
15 laundry, when prisons are locked down.
- 16                   (b) Conservation Camps (“Camps”): These are jointly operated by  
17 CDCR and the California Department of Forestry and Fire  
18 Protection (“Cal Fire”). Incarcerated persons assigned to  
19 Camps respond to fires and support fire prevention and other  
20 resource conservation projects.

21           56. Incarcerated persons with a Custody Designation of Minimum B may also  
22 work off of prison grounds, which opens opportunities to future employment prospects.

23           57. Certain factors known as “Administrative Determinants” restrict housing  
24 placement notwithstanding an incarcerated person’s Classification Score. One such  
25 Administrative Determinant is a felony hold, warrant, detainer, or the equivalent  
26 indicating the incarcerated person faces consecutive incarceration or deportation. (See  
27 Cal. Code Regs., tit. 15, § 3375.2, subd. (a)(4).) CDCR regulations provide that CDCR  
28 “shall not” assign an incarcerated person with this Administrative Determinant to a Level

1 I facility without perimeter gun towers, even if they would otherwise be eligible for such  
2 placement. (*Id.*)

3 58. CDCR assigns each incarcerated person a Housing Security Level and  
4 Custody Designation on the basis of their Classification Score and Administrative  
5 Determinants, if any. On information and belief, CDCR considers a Potential Hold or an  
6 Actual Hold as an Administrative Determinant equivalent to a felony hold, warrant,  
7 detainer, or the equivalent thereof and denies incarcerated persons with a Potential Hold  
8 or an Actual Hold placement in any Level I facility, even if they would otherwise be  
9 eligible.

10 **B. CDCR Impermissibly Makes Discriminatory Classifications and**  
11 **Considers Immigration and Citizenship Status in its Housing**  
12 **Classification Process.**

13 59. As described above, the existence of a Potential Hold, which is based on  
14 foreign birth, or an Actual Hold, which is based on ICE's determination of an  
15 individual's citizenship or immigration status, affects housing classifications.

16 60. Government Code section 7284.10(b)(2) prohibits any consideration of  
17 citizenship and immigration status in determining a person's custodial classification  
18 level. In CDCR custody, both Housing Security Level and Custody Designation  
19 constitute a person's custodial classification level.

20 61. Incarcerated persons are generally eligible for Minimum A or Minimum B  
21 Custody Designations, and placement in Camp or an MSF, if they have a Housing Score  
22 of 35 or lower and are within five years of release. However, the Potential Hold Policy  
23 and Discriminatory Actual Hold Policy allow persons born outside of the United States to  
24 be eligible for a Minimum B Custody Designation or placement in Camp or an MSF in  
25 only limited circumstances. Persons born outside of the United States are eligible for a  
26 Minimum B Custody Designation or placement in Camp or an MSF only if they have no  
27 history of deportation and they have either family ties in California or twelve months of  
28 cumulative work history in California. A person born outside of the United States

1 without either family ties in California or twelve months of cumulative work history in  
2 California is eligible for a Minimum B Custody Designation or placement in Camp or an  
3 MSF only if the person is a naturalized U.S. citizen and ICE confirms the person is not  
4 deportable. Accordingly, citizenship and immigration status are determinative factors for  
5 housing eligibility under CDCR policy.

6 **C. CDCR Restricts Access to In-Prison Benefits and Programming,**  
7 **and Determines Custodial Classification Levels, on the Basis of**  
8 **Discriminatory Classifications and Citizenship or Immigration**  
9 **Status.**

10 62. Potential and Actual Holds also unlawfully restrict access to rehabilitative  
11 programs and credit earning opportunities, based on discriminatory classifications and in  
12 violation of Government Code section 7284.10(b)(1).

13 63. In the case of incarcerated persons with a Housing Score of 35 or lower who  
14 are within five years of release but who CDCR made ineligible for a Minimum A,  
15 Minimum B, Camp or MSF placement due to a Potential Hold, CDCR restricts access to  
16 in-prison educational or rehabilitative programming and credit-earning opportunities in  
17 reliance on prohibited classifications. Where ineligibility is based on an Actual Hold,  
18 CDCR similarly restricts such access on the sole basis of perceived or actual citizenship  
19 or immigration status.

20 64. In the case of incarcerated persons with any Housing Score but who are  
21 ineligible for Minimum A, Minimum B, Camp or MSF placement and are subject to the  
22 Potential Hold Policy or Discriminatory Actual Hold Policy, CDCR considers citizenship  
23 and immigration status as a factor in determining a person's custodial classification level,  
24 in violation of Government Code section 7284.10(b)(2).

25 65. People with Potential or Actual Holds are also restricted from placement in a  
26 Camp. Participation in Camp can lead to additional good-time credits, shortening the  
27 total length of incarceration, and is a positive factor in the adjudication of discretionary  
28 immigration benefits applications. In some cases, incarcerated persons housed in Camps

1 can earn time off of their prison sentence faster than they would if housed elsewhere in  
2 Minimum Custody, such as in an MSF. For example, individuals serving terms for  
3 violent felonies can earn one day off of their prison sentence for every day they serve  
4 with good behavior in a Camp rather than only one day off for every two days they serve  
5 if housed elsewhere.

6 66. Camp also provides education and training. Participants receive a week of  
7 classroom instruction and a second week of field exercises taught by Cal Fire staff. Cal  
8 Fire also offers an 18-month advanced firefighter training at Ventura Training Center for  
9 formerly incarcerated persons who worked in Camps. Many formerly incarcerated  
10 firefighters from Camps go on to gain employment with Cal Fire, the U.S. Forest Service,  
11 and other agencies employing fire crews.

12 67. Camp also serves a rehabilitative function. The Camp program can be an  
13 important part of an incarcerated person's rehabilitation while they are serving their  
14 sentence with CDCR, as they are performing a vital service and giving back to the  
15 community. Furthermore, pursuant to a recently passed law, formerly incarcerated  
16 individuals who participated in the Camp Program are eligible for expedited  
17 expungement upon their release from custody.

18 68. An incarcerated person with a Potential Hold and/or Actual Hold is barred  
19 from many other in-prison CDCR programs. CDCR regulations and policies exclude  
20 people with Potential Holds and/or Actual Holds from participating in Pre-Release  
21 Community Programs. Pre-Release Community Programs allow people to serve the last  
22 part of their sentence, ranging from 12 to 32 months depending on the program, in  
23 community-based transitional housing in lieu of confinement in state prison. One  
24 program allows mothers with a child under six to live with that child.

25 69. Pre-Release Community Programs connect participants to community  
26 rehabilitative services and programs focused on skills such as Substance Use Disorder  
27 Treatment (SUDT), education, housing, family, reunification, vocational training and  
28 employment services. People in these programs are also able to take important steps that

1 will allow them to better transition back to their communities, including obtaining social  
2 security cards, connecting with potential employers, and reunifying with family.

3 70. CDCR has barred numerous U.S. citizens from participating in Pre-Release  
4 Community Programs as a result of its discriminatory Potential Hold Policy.

5 (a) Plaintiff Chan, a U.S. citizen born in the United States, was  
6 denied placement in the Custody to Community Transitional Reentry Program on the  
7 basis of a Potential Hold.

8 (b) J.G., a naturalized U.S. citizen who remains in CDCR custody,  
9 was informed by his Correctional Counselor that he was ineligible for the Male  
10 Community Reentry Program due to a Potential Hold. J.G. stated that he was a U.S.  
11 citizen, but his Correctional Counselor told him that Counselors do not have  
12 “jurisdiction” to remove a Potential Hold. The Counselor told J.G. that ICE will reach  
13 out to him to clear up the Potential Hold and that he should wait for that interview a few  
14 months before his release date.

15 (c) A.R., a naturalized U.S. citizen who was released from CDCR  
16 custody in March 2023, was otherwise eligible to participate in a re-entry program. But  
17 due to a Potential Hold, CDCR denied him placement in the program.

18 (d) Modesto Alcala, a naturalized U.S. citizen, was told by a  
19 CDCR counselor that he was ineligible for a re-entry program because of a Potential  
20 Hold.

21 (e) Maria Hernandez, a U.S. citizen born in the United States who  
22 remains in CDCR custody, was denied placement in the Custody to Community  
23 Transitional Reentry Program on the basis of a Potential Hold.

24 (f) Brian Bukle, a U.S. citizen who derived citizenship when his  
25 parents naturalized while he was a minor, was denied placement in the Alternative  
26 Custody Program on the basis of a Potential Hold.

27 71. CDCR regulations and policies also exclude people with a Potential Hold  
28 and/or Actual Hold from participating in California Prison Industry Authority (“CalPIA”)



1 jobs without an approved exemption. CalPIA jobs provide education, job training, and  
2 professional certifications.

3 **CLAIMS FOR RELIEF**

4 **COUNT ONE**

5 **Taxpayer Action (Code Civ. Proc., § 526a):**

6 **Violation of the Equal Protection Clause of the**

7 **Constitution of California (art. I, § 7(a))**

8 72. Plaintiffs incorporate all preceding paragraphs by reference.

9 73. Plaintiffs have paid taxes in California within the past year.

10 74. Defendants have received and used state funds.

11 75. Defendants are unlawfully expending public funds by performing their  
12 duties in violation of the equal protection clause of the California Constitution, art. I,  
13 section 7(a), in violation of Code of Civil Procedure section 526a.

14 76. The policies and practices described herein violate the rights of persons in  
15 CDCR custody to the equal protection of the laws as guaranteed by article I, section 7 of  
16 the Constitution of California.

17 77. The Potential Hold Policy and the ICE Notification Policy explicitly classify  
18 people in CDCR custody by national origin. On information and belief, CDCR  
19 additionally discriminates on the basis of race, color, ancestry, national origin, or ethnic  
20 group identification, in classifying some natural-born U.S. citizens as foreign born.

21 78. The ICE Notification Policy, along with the Potential Hold Policy, subject  
22 people in CDCR custody to investigation and possible wrongful detention by ICE,  
23 exclude people from participating in beneficial programs and opportunities, increase  
24 prison time, and can result in being housed at a higher security facility, on the basis of  
25 protected characteristics, all in violation of the equal protection clause.

26 79. Plaintiffs have no plain, speedy, or adequate remedy at law, and for that  
27 reason, they seek declaratory and injunctive relief.

28

1 80. For the reasons stated herein and pursuant to Code of Civil Procedure  
2 section 526a and the equal protection clause of the California Constitution, CDCR's  
3 Potential Hold Policy and ICE Notification Policy should be declared unlawful and  
4 enjoined.

5 **COUNT TWO**

6 **Taxpayer Action (Code Civ. Proc., § 526a):**

7 **Violation of Government Code § 11135**

8 81. Plaintiffs incorporate all preceding paragraphs by reference.

9 82. Plaintiffs have paid taxes in California within the past year.

10 83. Defendants have received and used state funds.

11 84. Defendants are unlawfully expending public funds by performing their  
12 duties in violation of Government Code section 11135.

13 85. The policies and practices described herein violate the rights of persons in  
14 CDCR custody to full and equal access to the benefits of any program or activity that is  
15 conducted, operated, or administered by the state or by any state agency without  
16 discrimination on the basis of race, color, ancestry, national origin, or ethnic group  
17 identification, as guaranteed by Government Code section 11135.

18 86. The Potential Hold Policy and the ICE Notification Policy explicitly classify  
19 people in CDCR custody by national origin. On information and belief, CDCR  
20 discriminates on the basis of race, color, ancestry, national origin, or ethnic group  
21 identification in classifying natural born U.S. citizens as foreign born.

22 87. The ICE Notification Policy, along with the Potential Hold Policy, subject  
23 people in CDCR custody to investigation and possible wrongful detention by ICE,  
24 exclude people from participating in beneficial programs and opportunities, increase  
25 prison time, and can result in being housed at a higher security facility, on the basis of  
26 protected characteristics, all in violation of their rights under Government Code section  
27 11135.

1 88. Plaintiffs have no plain, speedy, or adequate remedy at law, and for that  
2 reason, they seek declaratory and injunctive relief.

3 89. For the reasons stated herein and pursuant to Code of Civil Procedure  
4 section 526a and Government Code section 11135, CDCR's Potential Hold Policy and  
5 ICE Notification Policy should be declared unlawful and enjoined.

6 **COUNT THREE**

7 **Taxpayer Action (Code Civ. Proc., § 526a):**

8 **Violation of the California Values Act (Gov. Code, § 7284.10(b))**

9 90. Plaintiffs incorporate all preceding paragraphs by reference.

10 91. Plaintiffs have paid taxes in California within the past year.

11 92. Defendants have received and used state funds.

12 93. Defendants use national origin to impute citizenship—status as a non-citizen  
13 or naturalized citizen—and immigration status.

14 94. Defendants are unlawfully expending public funds by performing their  
15 duties in violation of Government Code section 7284.10(b).

16 95. The Potential Hold and Discriminatory Actual Hold Policy violate  
17 Government Code section 7284.10(b)(1)'s prohibition on restricting access to any in-  
18 prison educational or rehabilitative programming or credit-earning opportunity on the  
19 sole basis of citizenship or immigration status.

20 96. The policies described herein additionally violate the prohibition on  
21 considering citizenship and immigration status as a factor in determining a person's  
22 custodial classification level, as provided by Government Code section 7284.10(b)(2).

23 97. Plaintiffs have no plain, speedy, or adequate remedy at law, and for that  
24 reason, they seek declaratory and injunctive relief.

25 98. For the reasons stated herein and pursuant to Code of Civil Procedure  
26 section 526a and Government Code section 7284.10(b), CDCR's Potential Hold Policy  
27 and Discriminatory Actual Hold Policy should be declared unlawful and enjoined.  
28

1 **COUNT FOUR**

2 **Writ of Mandate (Code Civ. Proc., § 1085):**

3 **Violation of the Equal Protection Clause of the**  
4 **Constitution of California (art. I, § 7(a))**

5 99. Plaintiffs incorporate all preceding paragraphs by reference.

6 100. Defendants have a duty to comply with the California Constitution.

7 101. The policies and practices described herein violate the rights of persons in  
8 CDCR custody to the equal protection of the laws as guaranteed by article I, section 7 of  
9 the Constitution of California.

10 102. The Potential Hold Policy and the ICE Notification Policy explicitly classify  
11 people in CDCR custody by national origin. On information and belief, CDCR  
12 additionally discriminates on the basis of race, color, ancestry, national origin, or ethnic  
13 group identification, in classifying some natural-born U.S. citizens as foreign born.

14 103. The ICE Notification Policy, along with the Potential Hold Policy, subject  
15 people in CDCR custody to investigation and possible wrongful detention by ICE,  
16 exclude people from participating in beneficial programs and opportunities, increase  
17 prison time, and can result in being housed at a higher security facility, on the basis of  
18 protected characteristics, all in violation of the equal protection clause.

19 104. All Plaintiffs have standing under the public interest exception to the  
20 beneficial interest doctrine to seek a writ of mandate. Plaintiff Roth Chan has a  
21 beneficial interest in a writ of mandate.

22 105. For the reasons stated herein and pursuant to Code of Civil Procedure  
23 section 1085 and article I, section 7(a) of the Constitution of California, the Court should  
24 issue a writ of mandate compelling Defendants to perform their duties because there  
25 exists no plain, speedy, and adequate remedy in the ordinary course of law that would  
26 protect Plaintiffs' rights and interests.

1 **COUNT FIVE**

2 **Writ of Mandate (Code Civ. Proc., § 1085):**

3 **Violation of Government Code section 11135**

4 106. Plaintiffs incorporate all preceding paragraphs by reference.

5 107. Defendants have a duty to comply with Government Code section 11135.

6 108. The policies and practices described herein violate the rights of persons in  
7 CDCR custody to full and equal access to the benefits of any program or activity that is  
8 conducted, operated, or administered by the state or by any state agency without  
9 discrimination on the basis of race, color, ancestry, national origin, or ethnic group  
10 identification, as guaranteed by Government Code section 11135.

11 109. The Potential Hold Policy and the ICE Notification Policy explicitly classify  
12 people in CDCR custody by national origin. On information and belief, CDCR  
13 discriminates on the basis of race, color, ancestry, national origin, or ethnic group  
14 identification in classifying natural born U.S. citizens as foreign born.

15 110. The ICE Notification Policy, along with the Potential Hold Policy, subject  
16 people in CDCR custody to investigation and possible wrongful detention by ICE,  
17 exclude people from participating in beneficial programs and opportunities, increase  
18 prison time, and can result in being housed at a higher security facility, on the basis of  
19 protected characteristics, all in violation of their rights under Government Code section  
20 11135.

21 111. All Plaintiffs have standing under the public interest exception to the  
22 beneficial interest doctrine to seek a writ of mandate. Plaintiff Roth Chan has a  
23 beneficial interest in a writ of mandate.

24 112. For the reasons stated herein and pursuant to Code of Civil Procedure  
25 section 1085 and Government Code section 11135, the Court should issue a writ of  
26 mandate compelling Defendants to perform their duties because there exists no plain,  
27 speedy, and adequate remedy in the ordinary course of law that would protect Plaintiffs'  
28 rights and interests.

1 **COUNT SIX**

2 **Writ of Mandate (Code Civ. Proc., § 1085):**

3 **Violation of the California Values Act (Gov. Code, § 7284.10(b))**

4 113. Plaintiffs incorporate all preceding paragraphs by reference.

5 114. Defendants have a duty to comply with Government Code section  
6 7284.10(b).

7 115. Defendants use national origin to impute citizenship—status as a non-citizen  
8 or naturalized citizen—and immigration status.

9 116. The Potential Hold and Discriminatory Actual Hold Policy violate  
10 Government Code section 7284.10(b)(1)'s prohibition on restricting access to any in-  
11 prison educational or rehabilitative programming or credit-earning opportunity on the  
12 sole basis of citizenship or immigration status.

13 117. The policies described herein additionally violate the prohibition on  
14 considering citizenship and immigration status as a factor in determining a person's  
15 custodial classification level, as provided by Government Code section 7284.10(b)(2).

16 118. All Plaintiffs have standing under the public interest exception to the  
17 beneficial interest doctrine to seek a writ of mandate. Plaintiff Roth Chan has a  
18 beneficial interest in a writ of mandate.

19 119. For the reasons stated herein and pursuant to Code of Civil Procedure  
20 section 1085 and Government Code section 7284.10(b), the Court should issue a writ of  
21 mandate compelling Defendants to perform their duties because there exists no plain,  
22 speedy, and adequate remedy in the ordinary course of law that would protect Plaintiffs'  
23 rights and interests.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs ask the Court to grant the following relief:

- 26 a. Declare CDCR's ICE Notification Policy and Potential Hold Policy violate  
27 article I, section 7 of the Constitution of California and Government Code  
28 section 11135;

- 1 b. Declare that CDCR's Potential Hold Policy and Discriminatory Actual Hold  
2 Policy violate Government Code section 7284.10(b);
- 3 c. Enjoin CDCR from taking the following actions based on actual or perceived  
4 national origin, race, color, or ethnicity:
- 5 i. placing Potential Holds on individuals;
  - 6 ii. notifying ICE about individuals;
  - 7 iii. making security and custodial designations, including assignment  
8 to Level 1 Housing Security Level or Minimum A or Minimum B  
9 Custody Designations; and
  - 10 iv. denying individuals participation in in-person educational or  
11 rehabilitative programming or credit earning opportunities,  
12 including Camp and MSF placement, or in community transitional  
13 housing programs.
- 14 d. Enjoin CDCR from making security and custodial designations, including  
15 assignment to Level 1 Housing Security Level or Minimum A or Minimum B  
16 Custody Designations, or denying individuals participation in in-prison  
17 educational or rehabilitative programming or credit earning opportunities,  
18 including Camp and MSF placement, or in community transitional housing  
19 programs on the basis of citizenship status, immigration status, a Potential  
20 Hold, or an Actual Hold;
- 21 e. Award Plaintiffs-Petitioners their attorney's fees and costs;
- 22 f. Retain jurisdiction after entry of judgment to monitor compliance by  
23 Defendants with the provisions of the judgment; and
- 24 g. Grant such other and further relief in favor of Plaintiffs as is just and  
25 appropriate.
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1 DATED: April 27, 2023

MUNGER, TOLLES & OLSON LLP

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3  
4 *Robert Emmett Bowen*

5 ROBERT E. BOWEN

6 *Attorneys for Plaintiffs*

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3 **VERIFICATION**

4 I, Anoop Prasad, have read this Verified Petition for Writ of Mandate and  
5  
6 Complaint for Declaratory and Injunctive relief in the matter of *Asian Prisoner Support*  
7 *Committee, et al. v. CDCR, et al.* I am informed, and do believe, that the matters herein  
8 are true. On that ground, I allege that the matters stated herein are true. In addition, the  
9 facts within paragraph 20 are within my own personal knowledge, and I know them to be  
10 true.  
11

12 I declare under penalty of perjury under the laws of the State of California  
13 that the foregoing is true and correct.  
14

15 Dated: April 26, 2023  
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20 Anoop Prasad  
21 Advocacy Director  
22 Asian Prisoner Support Committee  
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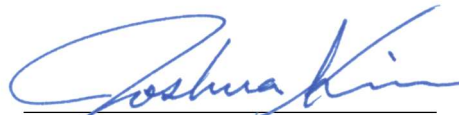
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**VERIFICATION**

I, Joshua E. Kim, have read this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive relief in the matter of *Asian Prisoner Support Committee, et al. v. CDCR, et al.* I am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true. In addition, the facts within paragraph 21 are within my own personal knowledge, and I know them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 26, 2023



Joshua E. Kim  
Director of Litigation  
Root & Rebound

1 **VERIFICATION**

2 I, Anouthinh “Choy” Pangthong, have read this Verified Petition for Writ of  
3  
4 Mandate and Complaint for Declaratory and Injunctive relief in the matter of *Asian*  
5 *Prisoner Support Committee, et al. v. CDCR, et al.* I am informed, and do believe, that  
6  
7 the matters herein are true. On that ground, I allege that the matters stated herein are true.  
8  
9 In addition, the facts within paragraphs 2 and 23 are within my own personal knowledge,  
10  
11 and I know them to be true, except for those facts alleged on information and belief.

12 I declare under penalty of perjury under the laws of the State of California  
13  
14 that the foregoing is true and correct.

15 Dated: April 26, 2023

Anouthinh Pangthong  
Anouthinh Pangthong (Apr 26, 2023 10:51 PDT)

16 Anouthinh “Choy” Pangthong  
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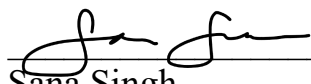
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**VERIFICATION**

I, Sana Singh, am an attorney for the Plaintiffs-Petitioners in this action, *Asian Prisoner Support Committee, et al. v. CDCR, et al.* I am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true. I verify this Petition and Complaint on Plaintiff Roth Chan’s behalf, as Ms. Chan resides in a county where no counsel of record has an office.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 26, 2023

  
Sana Singh