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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;
JEFF MACOMBER, Secretary of the
18 California Department of Corrections and
Rehabilitation,

19 *Defendants-Respondents.*
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21
22
23
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CASE NO. _____

**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”)¹ 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
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25 ¹ 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.²

25 _____
26 ² 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.³ 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 ³ 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.
- 26
27
28

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
16

17 

18
19 _____
20 Anoop Prasad
21 Advocacy Director
22 Asian Prisoner Support Committee
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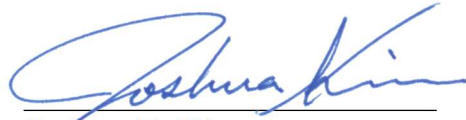
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VERIFICATION

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

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VERIFICATION

I, Anouthinh “Choy” Pangthong, 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 paragraphs 2 and 23 are within my own personal knowledge, and I know them to be true, except for those facts alleged on information and belief.

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

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

Anouthinh “Choy” Pangthong

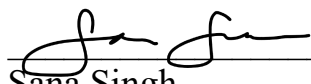
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VERIFICATION

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