

**CLAIMANT INFORMATION**

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

**ATTORNEY OR REPRESENTATIVE INFORMATION**

LAST NAME Zhao	FIRST NAME Jenny	MIDDLE INITIAL	
TELEPHONE NUMBER (415) 848-7710	EMAIL ADDRESS jennyz@advancingjustice-alc.org		
MAILING ADDRESS 55 Columbus Ave	CITY San Francisco	STATE CA	ZIP 94111

**CLAIM INFORMATION**

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

N/A

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

INCIDENT LOCATION  
See attachment

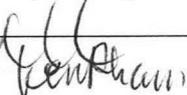
SPECIFIC DAMAGE OR INJURY DESCRIPTION  
See attachment

CIRCUMSTANCES THAT LED TO DAMAGE OR INJURY  
See attachment

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

**See attachment**

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

NOTICE AND SIGNATURE		
I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to \$10,000 (Penal Code section 72).		
SIGNATURE 	PRINTED NAME Tien Phung Pham	DATE 10-30-2020

INSTRUCTIONS	
<ul style="list-style-type: none"> <li>• Include a check or money order for \$25, payable to the State of California.                             <ul style="list-style-type: none"> <li>• \$25 filing fee is not required for amendments to existing claims.</li> </ul> </li> <li>• Confirm all sections relating to this claim are complete and the form is signed.</li> <li>• Attach copies of any documentation that supports your claim. Do not submit originals.</li> </ul>	
Mail the claim form and all attachments to: Office of Risk and Insurance Management Government Claims Program P.O. Box 989052, MS414 West Sacramento, CA 95798-9052	Claim forms can also be delivered to: Office of Risk and Insurance Management Government Claims Program 707 3rd Street, 1st Floor West Sacramento, CA 95605 1-800-955-0045

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

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

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

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

Individuals should not provide personal information that is not requested.

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

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

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

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

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

**Claimant:** Tien Phung PHAM, on behalf of himself as an individual and on behalf of a class of similarly-situated individuals.

### **Claim Information**

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

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

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

Mr. Pham was transferred by CDCR, Governor Newsom, the CDCR Secretary, and CDCR employees to the custody of ICE on August 31, 2020. Prior to August 31, 2020, and after and up to the date of this claim, CDCR, Governor Newsom, the CDCR Secretary, and CDCR employees transferred similarly-situated individuals from CDCR custody to ICE custody. This claim uses the term “transfer” to include the range of actions, policies, and procedures adopted and implemented by the state and its employees to facilitate ICE’s ability to take custody of an individual from CDCR custody. These actions, policies, and procedures include, but are not limited to, notifying ICE of an individual’s presence in CDCR custody; providing information to ICE about an individual in CDCR custody, including name, date and place of birth, and scheduled release date; granting detainer requests from ICE, including those in which probable cause of removability is founded upon biometrics-based checks of databases; placing “ICE holds” in an individual’s Central File and other CDCR records; permitting ICE to interview individuals in CDCR custody, and facilitating those interviews by transferring individuals among CDCR facilities; coordinating with ICE to release individuals from CDCR custody to ICE custody up to several days in advance of their scheduled release date; transferring individuals among CDCR facilities to permit ICE or its private contractor G4S to take custody of them; processing an individual for release to ICE or G4S; holding an individual in a secure area on CDCR premises until ICE or G4S arrives to take custody of the individual; and physically assisting ICE or G4S to take custody of the individual. These actions facilitate the “transfer” of custody whether or not CDCR or ICE uses the term “transfer.”

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

**Dollar Amount Explanation:**

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

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

**Incident Location:**

Mr. Pham was transferred from CDCR to ICE custody at San Quentin State Prison (“San Quentin”), located at Main Street, San Quentin, CA 94964, and the events forming the basis of his claim occurred at San Quentin and/or CDCR offices in Sacramento, California.

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

**Specific Damage or Injury Description:**

As a direct and proximate result of the actions of the state and its employees described below, Mr. Pham suffered a deprivation of his liberty and detention by ICE and G4S for 99 days as of December 8, 2020; physical pain; mental suffering; loss of enjoyment of life; inconvenience; grief; anxiety; humiliation; and emotional distress.

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

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

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

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

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

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

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

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

Despite full knowledge of the outbreaks at Mesa Verde and Otay Mesa, CDCR and state employees refused to acknowledge the demonstrable risks of transferring people to ICE custody.

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

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

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

## **Tien Pham**

Mr. Pham is a refugee from Vietnam who has lived in the United States since he was a child. Mr. Pham's father was incarcerated in a reeducation camp after the Vietnam War and the family was forced to flee the country. As a youth living in a housing project in San Jose, California, Mr. Pham faced constant attacks and bullying by his peers and began associating with gangs for protection. At the age of 17, he was involved in a fight with other teenagers and stabbed one of them, resulting in his arrest and conviction for attempted murder. While in prison, Mr. Pham earned his associate's degree, became a leader in an ethnic studies program at San Quentin, and worked with the San Quentin News.

On June 23, 2020, three commissioners of the Board of Parole Hearings found Mr. Pham suitable for parole, noting that his involvement in the crime was in part due to his young age and commending his growth and maturity. One of the commissioners stated that Mr. Pham had "gained the tools and skills" to succeed, that he had adopted "a whole new outlook on what's important in life," and that there appeared to be a "change to the fabric of who [he is]."

During the summer of 2020, Mr. Pham witnessed a catastrophic COVID-19 outbreak at San Quentin. After the transfer of a group of individuals from another California prison brought the virus to San Quentin, thousands of individuals at San Quentin became infected and dozens died. Mr. Pham saw his friends fall sick and die around him. The full Board of Parole Hearings and Governor Newsom expedited the process of approving the grant of parole to Mr. Pham specifically due to the COVID-19 outbreak at San Quentin.

Mr. Pham was set to be released on parole on August 31, 2020. That morning, his family and community supporters waited outside San Quentin to welcome Mr. Pham home. Despite the state's finding that Mr. Pham was suitable for parole and its action to expedite his release for his own safety and the safety of others, CDCR employees instead transferred him to ICE custody.

Around 5:00 a.m. on August 31, 2020, Mr. Pham was taken to R&R (Receiving & Release) in a secure area of San Quentin, expecting to be released on parole. Around 9:00 a.m., a G4S employee, T. Lewis, Badge #1097 arrived, handcuffed Mr. Pham, and placed him in a white van. After a 30-45 minute drive, Mr. Pham arrived at the San Francisco ICE Field Office around 10:00 a.m. He waited in a secure area until 4:00 p.m. when two ICE agents, one named Russell, arrived and handcuffed him. Mr. Pham was brought to a white van and driven to the San Francisco Airport. Mr. Pham and the two ICE officers escorting him were scheduled for a 6:00 p.m. flight to Denver, Colorado. They boarded the plane around 6:30 p.m. and arrived in Denver around 11:00 p.m. local time. Mr. Pham was handcuffed for the entire trip. Two employees of the GEO Group staffing the Aurora Contract Detention Facility took custody of Mr. Pham in Denver, waist-chained and leg-shackled him, and placed him in a white van. After a 30-minute drive, Mr. Pham arrived at the Aurora Contract Detention Facility around midnight.

The Aurora Contract Detention Facility has had a total of 132 COVID-19 cases among individuals detained there and currently has 14 active COVID-19 cases as of December 8, 2020.

As of December 8, 2020, Mr. Pham has been detained by ICE for 99 days. He was ordered removed to Vietnam by an immigration judge on September 30, 2020. Because Vietnam delays issuing travel documents and often refuses to issue travel documents for repatriation, Mr. Pham may face additional months in ICE custody while ICE attempts to remove him.

Mr. Pham's transfer by CDCR to ICE custody and subsequent detention have caused him to experience severe mental and emotional trauma and other harm. He fears that he will contract COVID-19 because he is in a facility with confirmed positive cases and lives with other people in a dorm environment in which beds are approximately three feet apart and social distancing is impossible. Continued separation from his family after completing his sentence has caused him great sadness. Mr. Pham feels dehumanized and humiliated by his detention, is unable to sleep or eat well, and is forced to spend 23 hours a day in a confined space. He has experienced anxiety, stress, and depression because he does not know how long he will remain in immigration detention. His time in immigration detention was extended because he was quarantined upon arrival at the Aurora Contract Detention Facility, causing him to miss an immigration court date. He has also experienced anxiety, stress, and depression due to his fear of being deported to Vietnam. Finally, while in detention, Mr. Pham is unable to work to earn money and must pay for phone calls, video visits, and expensive commissary items.

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

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

CDCR, Governor Newsom, the CDCR Secretary, and CDCR employees continue the policy and practice of transferring individuals from CDCR custody to ICE custody at the time of release even though doing so exposes these individuals to a greater risk of contracting COVID-19 than if they were released from criminal custody. Continuing to transfer these individuals

*Claimant: Tien PHAM*

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

*December 8, 2020*

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violates their substantive due process rights under the Fifth and Fourteenth Amendments to the Constitution.

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

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

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