

1 Andrew Ward (NY Bar No. 5364393)*
2 Joshua House (CA Bar No. 284856)
3 INSTITUTE FOR JUSTICE
4 901 North Glebe Road, Suite 900
5 Arlington, VA 22203
6 T: (703) 682-9320
F: (703) 682-9321
andrew.ward@ij.org
jhouse@ij.org
Attorneys for Plaintiffs Dario Gurrola and Fernando Herrera
**Counsel for service, admitted pro hac vice*

7 Thomas V. Loran III (CA Bar No. 95255)
8 PILLSBURY WINTHROP SHAW PITTMAN LLP
9 Four Embarcadero Center, 22nd Floor
10 San Francisco, CA 94111
T: (415) 983-1865
F: (415) 983-1200
thomas.loran@pillsburylaw.com

11 Derek M. Mayor (CA Bar No. 307171)
12 PILLSBURY WINTHROP SHAW PITTMAN LLP
13 500 Capitol Mall, Suite 1800
14 Sacramento, CA 95814
T: (916) 329-4703
F: (916) 441-3583
derek.mayor@pillsburylaw.com
Attorneys for Plaintiff Dario Gurrola

15 UNITED STATES DISTRICT COURT

16 EASTERN DISTRICT OF CALIFORNIA

18 DARIO GURROLA and FERNANDO
19 HERRERA,

20 *Plaintiffs,*

21 v.

22 DAVID DUNCAN, in his official capacity
23 as director of the California Emergency
24 Medical Services Authority; JEFFREY
25 KEPPLER, in his official capacity as
26 medical director of Northern California
EMS, Inc.; and TROY FALCK, in his
official capacity as medical director of
Sierra-Sacramento Valley Emergency
Medical Services Agency,

Defendants.

No. 2:20-cv-01238-JAM-DMC

Filed June 19, 2020

FIRST AMENDED COMPLAINT
(amended with consent per ECF 19
Joint Status Report)

INTRODUCTION

1
2 1. This is a Fourteenth Amendment challenge to California’s ban on
3 certifying people with felony convictions as emergency medical technicians (EMTs).
4 Under California law, people with one felony conviction cannot be certified for ten
5 years after release from incarceration, and people with two felony convictions are
6 banned for life. But there is no rational basis for categorical rules prohibiting nearly
7 all people with felony convictions—including old and irrelevant convictions—from
8 becoming EMTs. And the prohibitions are doubly irrational because California
9 trains and uses prisoners with felony records to fight wildfires, and it allows people
10 with felony records to serve as seasonal or volunteer firefighters. Yet, because full-
11 time firefighting usually requires EMT certification, the state effectively prohibits
12 many of these same people from pursuing firefighting careers. These irrational
13 prohibitions do not pass constitutional muster.

14 2. Plaintiff Dario Gurrola highlights the irrationality. Dario has two
15 felony convictions from many years ago. Even so, a decade after he turned his life
16 around, Dario remains prohibited from receiving basic EMT certification. That
17 means he cannot fight fires as a career, even though he learned to fight fires in
18 custody, he fights fires seasonally today, and he has already satisfied all EMT
19 qualifications. The prohibition will last the rest of his life. Nothing he has done, and
20 nothing he can ever do, will change it.

21 3. Plaintiff Fernando Herrera is similarly banned for life. Because of two
22 felony convictions for crimes he committed when he was 14 and 15, he cannot be
23 certified as an EMT, even though California deemed him fit to fight fires while he

1 was in prison. Fernando is also separately barred by the ten-year ban. But even
2 after he ages out of that prohibition, with his current record, he will still be barred
3 for the next decade. And the next decade. And the next.

4 4. That is unconstitutional. Under the Fourteenth Amendment, laws
5 must, at a minimum, be rational. It is irrational for the state to categorically
6 prohibit most people with felony convictions from being certified as EMTs, no
7 matter the crimes or the circumstances since. These harsh restrictions do nothing to
8 protect the public. They just make it harder for people like Dario and Fernando to
9 work toward a better life. Plaintiffs thus seek a judgment declaring California's ban
10 unconstitutional, enjoining its application, and allowing them to pursue EMT
11 certification.

12 JURISDICTION AND VENUE

13 5. This is a civil-rights action brought under the Fourteenth Amendment
14 to the U.S. Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the
15 Declaratory Judgment Act, 28 U.S.C. § 2201. Plaintiffs seek declaratory and
16 injunctive relief against the enforcement of California's total ban on people with two
17 felony convictions obtaining EMT certifications, 22 Cal. Code Regs. § 100214.3(c)(3),
18 its ten-year ban for people with one conviction for an offense punishable as a felony,
19 22 Cal. Code Regs. § 100214.3(c)(6), and the policies and practices of Defendants in
20 enforcing these provisions, which, both facially and as applied, violate Plaintiffs'
21 constitutional rights.

22 6. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal-question
23 jurisdiction) and 1343(a)(3) (civil-rights jurisdiction).

7. Venue is proper under 28 U.S.C. § 1391(b)(1)–(2). As described below, at least two of Defendants reside in this district, Defendants all reside in this state, and the events at issue arose in this district.

PARTIES

8. Plaintiff Dario Gurrola is a seasonal firefighter living in Alturas, California.

9. Plaintiff Fernando Herrera is a California Conservation Corps member now stationed in Watsonville, California. He is originally from Marysville, California.

10. Defendant David Duncan is the director of the California Emergency Medical Services Authority, the state agency that regulates EMT certification and which promulgated the regulations at issue. The Authority is in Sacramento County. Defendant Duncan is sued in his official capacity.

11. Defendant Jeffrey Kepple is the medical director of Northern California EMS, Inc., which is a “local EMS agency,”¹ and which administers EMT certification in Alturas and other parts of northern California.² Defendant Kepple is sued in his official capacity.

12. Defendant Troy Falck is the medical director of Sierra-Sacramento Valley Emergency Medical Services Agency, which is also a local EMS agency, and

¹ “Local EMS agency” is the term used in Cal. Health & Safety Code §§ 1797.94 and 1798.200 and 22 Cal. Code Regs. §§ 100202, 100204, and 100214.3.

² See Cal. Health & Safety Code §§ 1797.202 and 1798.200; 22 Cal. Code Regs. §§ 100204 and 100214.3.

1 which administers EMT certification in Yuba County and other parts of Northern
2 California. Defendant Falck is sued in his official capacity.

3 STATEMENT OF FACTS

4 I. Dario Gurrola

5 A. *Dario's past*

6 13. Today, Dario Gurrola lives a quiet life in Alturas, supporting himself
7 by working in seasonal firefighting and doing odd jobs in the offseason.

8 14. As a young man, however, Dario lived a different life. In high school,
9 he was involved with a tough crowd from his neighborhood in southern San Diego
10 County.

11 15. In 2003, a police officer stopped a 22-year-old Dario and found the
12 kitchen knife he carried in his jacket pocket for protection. He was convicted of
13 possessing a concealed dagger, a felony.

14 16. About two years later, Dario was out one night after drinking and
15 abusing drugs. A security guard tried to calm him down, and Dario assaulted the
16 guard. Dario was convicted of assault, another felony.

17 17. In the following years, Dario was convicted of misdemeanors and two
18 felonies that were later reduced to misdemeanors, the last in 2011. Those
19 convictions have since been dismissed. The 2003 and 2005 felonies are the only ones
20 on his record.

21 18. Eventually, as Dario's twenties were ending, he realized he had to
22 change. He accepted full responsibility for his past convictions, which he believes
23 resulted from his own bad choices.

1 19. Dario cut ties with his neighborhood friends. He reconnected with his
2 father, a retired San Diego sheriff. He consistently attended church, which he has
3 done ever since because his faith is the most important part of his life.

4 20. And Dario returned to school, focused on becoming a first responder.

5 21. Nearly a decade ago, Dario turned his life around.

6 ***B. Dario's dream of becoming a career firefighter***

7 22. Dario had always wanted to be a first responder, but he thought his
8 convictions would prevent him from becoming a police officer. So when he decided
9 he needed to make something of himself, he chose to pursue firefighting.

10 23. A firefighting career made sense. While in custody as a juvenile, Dario
11 had served in a fire camp in Ventura, California, where he fought a major fire.

12 24. In the past decade, Dario earned exceptional firefighting and EMT
13 credentials.

14 25. In 2013 and 2015, Dario successfully served as a seasonal firefighter
15 for the U.S. Forest Service.

16 26. In 2017, he completed a 212-hour EMT basic training course.

17 27. That same year, he also worked as a certified medical transport driver.

18 28. In 2018, he completed firefighter training at San Pasqual Reservation
19 Fire Academy.

20 29. Then he completed further courses in firefighting, fire behavior, risk
21 assessment, and airway and defibrillation rescue. He has dozens of certifications.

22 30. In 2019, he successfully served as a seasonal firefighter at the Cal
23 Pines Fire Department in Alturas.

1 31. And he sat for, and passed, a test with the National Registry of
2 Emergency Medical Technicians.

3 32. Finally, after preparing for nearly a decade, Dario applied to Northern
4 California EMS for EMT certification.

5 33. Dario was denied EMT certification.

6 34. Dario appealed and represented himself in a hearing before an
7 administrative law judge.

8 35. Dario brought evidence of rehabilitation to the hearing, including
9 certificates from his firefighting and EMT training. He brought three letters
10 showing his good character, including one from a fire department captain who
11 called Dario “professional, courteous, compassionate and respectful.”

12 36. The administrative law judge explained that “Nor-Cal EMS is
13 prohibited from granting [Dario] an EMT certification, even on a probationary
14 basis, based on his two felony convictions.”

15 37. After the decision, Dario emailed Nor-Cal EMS, pleading for a way to
16 remedy his denial. A representative of Nor-Cal EMS responded that it “is bound by
17 the California Code of Regulations.” The representative continued that she “very
18 much respect[s] your desire to help your community. Unfortunately, Nor-Cal EMS
19 cannot issue an EMT certification for you.”

20 38. Nevertheless, Dario is again serving as a seasonal firefighter, now with
21 the California Department of Forestry and Fire Protection.

22 39. In this role, Dario has successfully responded to medical-emergency
23 calls and regularly enters people’s homes to do so.

1 40. In short, given his experience fighting fires in custody and seasonally,
2 Dario wants to become certified as an EMT and, ultimately, to become a career
3 firefighter.

4 41. But because of his criminal record, California forever prohibits Dario
5 from being certified as an EMT.

6 42. California's prohibition also effectively prohibits Dario from becoming
7 a career firefighter because most of California's 900-plus fire departments require
8 an EMT certification for career positions.

9 43. Granting Dario an EMT certification would not empower him to harm
10 anyone or break any law.

11 44. Granting him an EMT certification would pose no risk to society.

12 **II. Fernando Herrera**

13 45. Plaintiff Ferando Herrera has a similar story.

14 **A. *Fernando's past***

15 46. Fernando grew up near Marysville, California, in Yuba County, as the
16 son of a disabled single mother.

17 47. Fernando struggled to fit in among his peers.

18 48. When Fernando was 14, he and a friend decided to scare another boy
19 and push him around.

20 49. The victim was not injured.

21 50. Fernando turned himself in.

22 51. While in pretrial custody, a 15-year-old Fernando and his friend later
23 encountered the same boy, who was in juvenile detention for an unrelated matter.

1 Fernando and his friend believed the boy had lied to police by claiming that
2 Fernando and his friend had a weapon on them. They beat up the boy.

3 52. Fernando pleaded guilty to two adult felonies: for the first encounter,
4 assault with a deadly weapon (a knife); for the second, witness tampering.

5 53. Fernando was sentenced to prison.

6 ***B. Fernando's rehabilitation***

7 54. When he was seventeen, watching his mother cry during a visit,
8 Fernando realized he had to change.

9 55. Fernando accepted responsibility for the harm he had caused and
10 dedicated himself to live a better life.

11 56. Since pleading no contest in 2015, Fernando has not been convicted of
12 any new crimes.

13 57. Fernando turned his life around.

14 58. Fernando was released in 2018 and he completed parole in 2019.

15 59. Fernando has been a productive member of society since his release,
16 working first at a lumber mill, then at a hamburger restaurant, and, most recently,
17 at the California Conservation Corps, where he is now a supervisor.

18 60. At the Corps, he helped battle the Camp Fire, the deadliest wildfire in
19 California history. He also does other kinds of conservation work.

20 61. Fernando wants to get certified as an EMT.

21 62. Fernando took and passed an EMT training class in 2020.

22 63. He has not taken further steps toward certification, however, because
23 he knows his record currently makes it pointless.

64. Because of his criminal record, California forever prohibits Fernando from being certified as an EMT.

65. California also prohibits Fernando from being certified as an EMT because it has been less than ten years since he was released from incarceration for a felony.

66. Granting Fernando an EMT certification would not empower him to harm anyone or break any law.

67. Granting him an EMT certification would pose no risk to society.

III. The Conservation Camp Program

68. Dario and Fernando are not alone.

69. California newspapers have repeatedly highlighted the problem that California-trained incarcerated firefighters are often prohibited from later working as career firefighters because of the EMT restrictions.³

70. The Conservation Camp Program is a volunteer firefighting program for prison inmates, jointly administered by the California Department of Corrections and Rehabilitation and CAL FIRE (the California Department of Forestry and Fire Protection).

71. Founded during World War II, the program aims to help inmates succeed after release. As a Corrections Department spokesman put it, “Our primary

³ See, e.g., Adesuwa Agbonile, *Inmates help battle California’s wildfires. But when freed, many can’t get firefighting jobs* (Sacramento Bee Sept. 7, 2018); *Editorial: Inmates risking their lives to fight California’s wildfires deserve a chance at full-time jobs* (L.A. Times Nov. 1, 2019).

1 mission as a corrections system ... is to provide inmates with skills to improve their
2 lives when they leave.”⁴

3 72. Inmates are admitted case-by-case. Only inmates with sustained good
4 behavior, and who have taken classes on rehabilitation, are allowed.

5 73. Inmates receive the same training, education, and equipment as
6 seasonal firefighters with CAL FIRE.

7 74. The training includes a week of classroom instruction, a second week of
8 field exercises, and more, ongoing training. Inmates learn about fire safety, hand-
9 tool use, teamwork, and crew expectations. Inmates are also evaluated for physical
10 fitness.

11 75. Then, like civilian firefighters, inmate firefighters work to protect the
12 homes and lives of their fellow Californians.

13 76. Inmate firefighters fight fires in 24-hour shifts. For each day working
14 in the fire camps, inmates can earn two days off their sentences.

15 77. The fire camps use thousands of inmates each year—there were about
16 2,150 authorized to fight fires in 2019.

17 78. In 2016, inmate firefighters outnumbered seasonal CAL FIRE
18 firefighters about two to one.⁵

19 79. Each year, inmate firefighters perform over three million hours of
20 emergency response work, saving California around \$90 million annually.

⁴ Annika Neklason, *California Is Running Out of Inmates to Fight Its Fires* (The Atlantic Dec. 7, 2017).

⁵ Zoe Todd & Jane McMullen, “*You Can Barely Breathe*”: *The Inmates Who Fought California’s Deadliest Wildfire* (Frontline Nov. 1, 2019).

1 80. In 2018, inmate firefighters helped respond to the Camp Fire.

2 81. Inmate firefighters are paid a base rate of about two to five dollars per
3 day, plus another dollar per hour when they are fighting fires.

4 82. California civilian firefighters earn an average of \$73,860 per year plus
5 benefits.

6 83. After a juvenile proceeding, Dario served in a fire camp when he was
7 19. He fought two fires there, one of them major. He remembers the captain saying,
8 “If you ever want to change your life, this is something that you can do.”

9 84. Fernando, too, served in a fire camp while he was incarcerated, helping
10 to battle a major fire. He fell in love with the work, and thought it was something
11 he could do for the rest of his life.

12 85. But it isn’t. As one prisoner reentry counselor told the Sacramento Bee,
13 “I have to tell people right out—I’m sorry, you can’t do this [EMS agencies] are
14 just turning people away with felonies, period.”⁶

15 86. Within the last week, California enacted A.B. 2147, which allows some
16 former inmate firefighters to seek discretionary expungement of some convictions.

17 87. On its face, A.B. 2147 does not address Dario’s situation as he did not
18 serve in a fire camp while incarcerated for his operative convictions. He appears
19 ineligible for expungement under the statute.

20 88. Further, A.B. 2147 does not conclusively redress the harm to Dario and
21 Fernando because the A.B. 2147 expungement process would require them to file

⁶ Agbonile, *supra* n.3.

1 petitions in courts far from where they live (or find lawyers to do so), and those
2 petitions could be denied according to judges' discretion.

3 **IV. California Irrationally Bans People with Felony Convictions**
4 **from EMT Certification.**

5 89. California effectively prohibits people with felony convictions from
6 receiving EMT certification.

7 90. California uses incarcerated people as firefighters to give them useful
8 job training. But, once they are released, California often prevents them from
9 becoming firefighters because EMT certification is a prerequisite for the job in the
10 vast majority of fire departments.

11 91. For people with two felonies like Dario and Fernando, this ban lasts
12 forever.

13 92. This irrational system stems from 22 Cal. Code Regs. § 100214.3.

14 93. Under 22 Cal. Code Regs. § 100214.3(c)(3), an EMT certification "shall"
15 be denied if the applicant "[h]as been convicted of two (2) or more felonies."

16 94. Subsection 100214.3(c)(3) applies even to people convicted of multiple
17 felonies for a single incident.

18 95. Further, under 22 Cal. Code Regs. § 100214.3(c)(6), an EMT
19 certification "shall" be denied if the applicant "[h]as been convicted and released
20 from incarceration for said offense during the preceding ten (10) years for any
21 offense punishable as a felony."

22 96. Subsection 100214.3(c)(6) applies not just to felonies but even to "any
23 offense punishable as a felony."

1 97. Medical directors of local emergency medical services agencies,
2 including Defendants Kepple and Falck, must and do follow these regulations.
3 Dario's denial is just one example.

4 98. But these categorical lifetime and ten-year bans are not rationally
5 related to EMT work.

6 99. "Emergency Medical Technician" means "an individual trained in all
7 facets of basic life support."⁷

8 100. "Basic life support" means "emergency first aid and cardiopulmonary
9 resuscitation procedures ... *without* invasive techniques."⁸

10 101. This includes taking temperatures, checking blood pressure,
11 performing CPR, and administering oxygen.⁹

12 102. EMTs are not paramedics, who receive about ten times as much
13 training.

14 103. Paramedics, not EMTs, perform more advanced procedures such as
15 intubation, accessing the veins, and administering most drugs.

16 104. EMT certification does not empower certificate-holders to drive
17 ambulances.

18 105. There are over 60,000 certified EMTs in California.

19 106. EMT certification requires only 170 hours of training.¹⁰

⁷ Cal. Health & Safety Code § 1797.80.

⁸ Cal. Health & Safety Code § 1797.60 (emphasis added).

⁹ 22 Cal. Code Regs. § 100063(a).

¹⁰ 22 Cal. Code Regs. § 100074(a).

1 107. EMT certification is not itself a job position. It is a hiring credential in
2 many kinds of businesses.

3 108. For example, rock-climbing gyms and outdoor adventure businesses
4 advertise that some employees are EMT certified. EMTs also work at factories,
5 amusement parks, stadiums, and event venues. Some EMTs work as dispatchers
6 and do not interact in person with the public at all.

7 109. In recent decades, the number of statutory felonies has skyrocketed.

8 110. Roughly one in twelve American adults has a felony conviction.¹¹

9 111. Given the proliferation of felonies in modern criminal law, a particular
10 felony conviction may have no bearing on a person's fitness for EMT certification.

11 112. In fact, California's categorical lifetime and ten-year bans harm the
12 public by making it harder for people with felony records to get EMT training and,
13 ultimately, to help others.

14 113. There is no evidence that California's bans protect the public from bad
15 EMTs.

16 114. California's bans do not protect the public from bad EMTs.

17 115. Indeed, local emergency medical services agencies have separate
18 authority to deny certificates for behavior indicating that an applicant might harm
19 someone.

¹¹ Sarah Shannon et al., *The Growth, Scope, and Spatial Distribution of People With Felony Records in the United States, 1948–2010* (Demography 2017).

116. Under Cal. Health & Safety Code § 1798.200(c)(6), EMT certifications can be denied if the applicant is convicted “of any crime which is substantially related to the qualifications, functions, and duties of” emergency personnel.

117. California law thus already provides ample authority to reject an applicant for crimes that are related to EMT work.

118. As a result, the bans do nothing but exclude people whose felony records are unrelated to EMT work.

119. Yet, without EMT certification, people with felony convictions can still serve in seasonal firefighter positions and can perform the same work as that often performed in EMT-required positions.

120. And, without EMT certifications, people with felony convictions can still serve as volunteer firefighters and do the same work as career firefighters in fire departments that require EMT certification for career positions.

INJURY TO PLAINTIFFS

121. Because of the categorical, lifetime ban for two felony convictions, Dario can never receive certification as an EMT.

122. Because of the lifetime ban, Dario is effectively prohibited from pursuing work as a career firefighter.

123. Because of the lifetime ban, Dario must do less stable, lower-paying work.

124. Because of the lifetime ban, Dario faces career uncertainty.

125. Because of the lifetime ban, Dario continues to be stigmatized long after he paid his debt to society.

1 126. Because of the lifetime ban, Dario can work only as a seasonal
2 firefighter. Dario also has to work odd jobs when he would rather be a year-round
3 firefighter.

4 127. To be clear, Dario is not challenging his initial certification denial or
5 seeking damages based on it. He is seeking relief prospectively, for his *next*
6 application, based on the unconstitutional burden the lifetime ban is imposing on
7 him now.

8 128. But for the lifetime ban, Dario would re-apply for EMT certification.

9 129. But for the lifetime ban, Dario could and would satisfy all other
10 requirements for EMT certification.

11 130. But for the lifetime ban, Dario would be granted EMT certification.

12 131. Because of the ban, however, it is futile for Dario to take any more
13 steps toward certification, which would only be a pointless waste of time and money.

14 132. If the ban were removed, Dario would pursue his EMT certification
15 from Defendant Kepple.

16 133. If the ban were removed, Dario would obtain his EMT certification and
17 would then be eligible for full-time employment as a firefighter.

18 134. Because of the categorical lifetime and ten-year bans, Fernando cannot
19 receive certification as an EMT.

20 135. Because of the lifetime and ten-year bans, Fernando continues to be
21 stigmatized long after he paid his debt to society.

22 136. But for the lifetime and ten-years bans, Fernando would apply for
23 EMT certification.

137. But for the lifetime and ten-year bans, Fernando could and would satisfy all other requirements for EMT certification.

138. But for the lifetime and ten-year bans, Fernando would be granted EMT certification.

139. Because of the bans, however, it is futile for Fernando to take any more steps toward certification, which would only be a pointless waste of time and money.

140. If the bans were removed, Fernando would pursue his EMT certification from Defendant Falck.

141. If the bans were removed, Fernando would obtain his EMT certification.

CLAIMS FOR RELIEF

First Claim for Relief—Equal Protection

142. Plaintiffs incorporate the preceding paragraphs by reference.

143. Under the Fourteenth Amendment to the U.S. Constitution, no state may “deny to any person within its jurisdiction the equal protection of the laws.”

144. By categorically banning people with two or more felony convictions from EMT certification for life and people with one conviction for an offense punishable as a felony for ten years after release, Defendants violate the Fourteenth Amendment right to equal protection of the laws.

145. Equal protection means that the government cannot irrationally subject similarly situated people to different rules.

1 146. EMT certification applicants or would-be applicants who have two past
2 felony convictions are similarly situated to other EMT certification applicants or
3 would-be applicants.

4 147. EMT certification applicants or would-be applicants who have been
5 released in the last ten years from incarceration for an offense punishable as a
6 felony are similarly situated to other EMT certification applicants or would-be
7 applicants.

8 148. Because Dario is a past applicant and wants to apply for EMT
9 certification in the future, he is similarly situated, in all relevant respects, to other
10 people who want to apply for EMT certification.

11 149. Because Fernando wants to apply for EMT certification in the future,
12 he is similarly situated, in all relevant respects, to other people who want to apply
13 for EMT certification.

14 150. People with two or more felony convictions who were released from
15 incarceration more than ten years ago are similarly situated to people with one
16 felony conviction, any number of misdemeanors convictions, or both who were
17 released from incarceration more than ten years ago.

18 151. Because Dario has two felony convictions and was released from
19 incarceration more than ten years ago, he is similarly situated, in all relevant
20 respects, to people with one felony conviction, any number of misdemeanor
21 convictions, or both who were released from incarceration more than ten years ago.

1 152. People with two or more felony convictions for certain criminal acts are
2 similarly situated to people who have committed the same or similar criminal acts
3 but were not convicted of two felonies.

4 153. People with one conviction for an offense punishable as a felony for
5 certain criminal acts are similarly situated to people who have committed the same
6 or similar criminal acts but were not convicted of an offense punishable as a felony.

7 154. Dario is, in all relevant respects, similarly situated to people who
8 committed the same or similar criminal acts but were not convicted of two felonies.

9 155. Fernando is, in all relevant respects, similarly situated to people who
10 committed the same or similar criminal acts but were not convicted of an offense
11 punishable as a felony.

12 156. People with two or more felony convictions who want EMT certification
13 are, in all relevant respects, similarly situated to people who want EMT
14 certification and who have committed criminal acts for which they could have been,
15 but were not, convicted of two or more felonies.

16 157. Dario is, in all relevant respects, similarly situated to people who want
17 EMT certification and who have committed criminal acts for which they could have
18 been, but were not, convicted of two or more felonies.

19 158. Fernando is, in all relevant respects, similarly situated to people who
20 want EMT certification and who have committed criminal acts for which they could
21 have been, but were not, convicted of an offense punishable as a felony.

1 159. The bans irrationally discriminate between similarly situated people
2 because many people with felony convictions have been rehabilitated and would
3 present no unique risk to the public if they were certified as EMTs.

4 160. The lifetime ban irrationally discriminates between similarly situated
5 people because people who served sentences for two felonies long ago would present
6 no unique risk to the public if certified as EMTs because recidivism decreases with
7 age.

8 161. The bans irrationally discriminate between similarly situated people
9 because some people *without* criminal records *would* present risks to the public if
10 certified as EMTs. But they are not barred from EMT certification.

11 162. The bans irrationally discriminate between similarly situated people
12 because lumping all felonies (and offenses punishable as felonies) together
13 irrationally conflates a wide range of conduct and criminal sentences. This is both
14 overinclusive and underinclusive. Many felonies have no bearing on whether
15 someone would be a dangerous EMT. And some misdemeanors that do have a
16 bearing on whether someone would be a dangerous EMT do not factor into the bans.

17 163. The bans irrationally discriminate between similarly situated people
18 because lumping all felonies (and offenses punishable as felonies) together
19 irrationally ignores the reality of the modern criminal justice system, in which
20 people who committed factually identical conduct can and do receive vastly different
21 legal outcomes. Some people who commit conduct that could be charged as two
22 felonies are convicted of only one felony or misdemeanors (or nothing at all) based
23 on charging decisions and plea bargaining.

1 164. The bans irrationally discriminate between similarly situated people
2 because they do not allow for consideration of the nature and severity of the crimes,
3 the nature and circumstances of an applicant's involvement in the crimes, the time
4 elapsed since the convictions, and the degree of the applicant's rehabilitation.

5 165. Because the bans irrationally discriminate between similarly situated
6 groups of people, they violate the Equal Protection Clause.

7 166. Because the lifetime ban irrationally discriminates between Dario and
8 similarly situated people, it violates the Equal Protection Clause.

9 167. Because both bans irrationally discriminate between Fernando and
10 similarly situated people, they violate the Equal Protection Clause.

11 168. Dario would present no risk to the public if he were certified as an
12 EMT. Certifying Dario—who has protected and continues to protect the public as a
13 non-career firefighter—would benefit the public.

14 169. Fernando would present no risk to the public if he were certified as an
15 EMT. Certifying Fernando—who has protected the public as a non-career
16 firefighter—would benefit the public.

17 170. California already provides local emergency medical services agencies
18 with authority to deny EMT certificates for behavior indicating that an applicant
19 might pose a threat to public health and safety in Cal. Health & Safety Code
20 § 1798.200(c)(6).

21 171. California's categorical bans serve no legitimate purpose given the
22 existence of Cal. Health & Safety Code § 1798.200(c)(6).

1 172. California's categorical bans makes emergency care less available to
2 Californians.

3 173. California's categorical bans makes emergency care more expensive for
4 Californians.

5 174. California's categorical bans contribute to a shortage of firefighters in
6 rural California areas.

7 175. California's categorical bans contribute to recidivism.

8 176. California's categorical bans are not rationally related to the duties of
9 EMTs.

10 177. California's categorical bans are not rationally related to any
11 legitimate government interest.

12 178. Categorically banning Dario and Fernando from EMT certification for
13 life is not rationally related to the duties of EMTs.

14 179. Categorically banning Dario and Fernando from EMT certification for
15 life is not rationally related to the duties of firefighters.

16 180. Categorically banning Dario and Fernando from EMT certification for
17 life is not rationally related to any legitimate government interest.

18 181. Categorically banning Fernando from EMT certification for ten years is
19 not rationally related to the duties of EMTs.

20 182. Categorically banning Fernando from EMT certification for ten years is
21 not rationally related to any legitimate government interest.

1 183. Unless Defendants are enjoined from enforcing 22 Cal. Code Regs.
2 § 100214.3(c)(3) and (c)(6), Dario and Fernando will suffer continuing and
3 irreparable harm.

4 **Second Claim for Relief—Due Process**

5 184. Plaintiffs incorporate the preceding paragraphs by reference.

6 185. By categorically banning people with two or more felony convictions
7 from EMT certification for life and people with one conviction for an offense
8 punishable as a felony for ten years after release, Defendants violate the
9 Fourteenth Amendment right to due process of law.

10 186. Due process has both substantive and procedural components.

11 187. The liberty component of the Fourteenth Amendment's Due Process
12 Clause includes the right to choose one's field of private employment and the right
13 to earn an honest living.

14 188. Due process requires that regulations on entry into a profession must
15 be rationally related, not merely to any legitimate state interest, but specifically to
16 the applicant's fitness or capacity to practice the profession itself.

17 189. Categorically banning people with two or more felony convictions from
18 EMT certification for life is not rationally related to the duties of EMTs.

19 190. Categorically banning people with two or more felony convictions from
20 EMT certification for life is not rationally related to any legitimate government
21 interest.

22 191. Irrebuttably presuming that people with two or more felony
23 convictions are unfit to be EMTs forever denies due process.

1 192. Categorically banning people with a conviction for an offense
2 punishable as a felony for ten years after release is not rationally related to the
3 duties of EMTs.

4 193. Categorically banning people with a conviction for an offense
5 punishable as a felony for ten years after release is not rationally related to any
6 legitimate government interest.

7 194. Irrebuttably presuming that people with a conviction for an offense
8 punishable as a felony are unfit to be EMTs for ten years after release denies due
9 process.

10 195. Dario and Fernando would present no risk to the public if they were
11 certified as EMTs.

12 196. Certifying Dario—who has protected and continues to protect the
13 public as a non-career firefighter—would benefit the public.

14 197. Certifying Fernando—who has protected the public as a non-career
15 firefighter—would benefit the public.

16 198. Categorically banning Dario and Fernando from EMT certification for
17 life is not rationally related to the duties of EMTs.

18 199. Categorically banning Dario and Fernando from EMT certification for
19 life is not rationally related to the duties of firefighters.

20 200. Categorically banning Dario and Fernando from EMT certification for
21 life is not rationally related to any legitimate government interest.

22 201. Irrebuttably presuming that Dario and Fernando are forever unfit to
23 be EMTs denies due process.

1 202. Categorically banning Fernando from EMT certification for ten years
2 after release is not rationally related to the duties of EMTs.

3 203. Categorically banning Fernando from EMT certification for ten years
4 after release is not rationally related to any legitimate government interest.

5 204. Irrebuttably presuming that Fernando is unfit to be an EMT for ten
6 years after release denies due process.

7 205. California already provides local emergency medical services agencies
8 with authority to deny EMT certificates for behavior indicating that an applicant
9 might pose a threat to public health and safety in Cal. Health & Safety Code
10 § 1798.200(c)(6).

11 206. California's categorical ban serve no legitimate purpose given Cal.
12 Health & Safety Code § 1798.200(c)(6).

13 207. Unless Defendants are enjoined from enforcing 22 Cal. Code Regs.
14 § 100214.3(c)(3) and (c)(6), Dario and Fernando will suffer continuing and
15 irreparable harm.

16 **Third Claim for Relief—Privileges or Immunities**

17 208. Plaintiffs incorporate the preceding paragraphs by reference.

18 209. The Fourteenth Amendment's Privileges or Immunities Clause was
19 meant to protect the right to earn a living free from irrational government
20 restrictions.

21 210. By categorically banning people with two or more felony convictions
22 from EMT certification for life, Defendants violate the Privileges or Immunities
23 Clause.

211. By categorically banning people with a conviction for an offense punishable as a felony from EMT certification for ten years after release, Defendants violate the Privileges or Immunities Clause.

212. By categorically banning Dario and Fernando from EMT certification for life, Defendants violate the Privileges or Immunities Clause.

213. By categorically banning Fernando from EMT certification for ten years after release, Defendants violate the Privileges or Immunities Clause.

214. Plaintiffs recognize that this argument is foreclosed by the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873). They preserve it here given the “overwhelming consensus among leading constitutional scholars” that *Slaughter-House* was “egregiously wrong.” *McDonald v. Chicago*, 561 U.S. 742, 756–57 (2010) (quoting Br. for Constitutional Law Professors as Amici Curiae, Docket No. 08-1521, 561 U.S. 742 (filed July 9, 2009)).

REQUEST FOR RELIEF

Plaintiffs respectfully request:

A. A judgment declaring that 22 Cal. Code Regs. § 100214.3(c)(3) and (c)(6) are unconstitutional, both on their face and as applied to Plaintiffs;

B. A permanent injunction preventing Defendants from enforcing 22 Cal. Code Regs. § 100214.3(c)(3) and (c)(6);

C. An award of attorneys' fees, costs, and expenses per 42 U.S.C. § 1988;

and

D. Any further legal and equitable relief that the Court deems just and proper.

Dated: September 15, 2020

Respectfully submitted,

/s/ Andrew Ward

Thomas V. Loran III (CA Bar No. 95255)
PILLSBURY WINTHROP
SHAW PITTMAN LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111
T: (415) 983 1865
F: (415) 983-1200
thomas.loran@pillsburylaw.com

Andrew Ward (NY Bar No. 5364393)*
Joshua House (CA Bar No. 284856)
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
T: (703) 682-9320
F: (703) 682-9321
andrew.ward@ij.org
jhouse@ij.org

Derek M. Mayor (CA Bar No. 307171)
PILLSBURY WINTHROP
SHAW PITTMAN LLP
500 Capitol Mall, Suite 1800
Sacramento, CA 95814
T: (916) 329-4703
F: (916) 441-3583
derek.mayor@pillsburylaw.com

*Attorneys for Plaintiffs Dario Gurrola
and Fernando Herrera*

**Counsel for service,
admitted pro hac vice*

Attorneys for Plaintiff Dario Gurrola

Certificate of Service

I hereby certify that on September 15, 2020, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system: **First Amended Complaint**.

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system, **except** for Defendant Troy Falck in his official capacity as medical director of Sierra-Sacramento Valley Emergency Medical Services Agency, who will be served by summons.

Dated: September 15, 2020

Respectfully submitted,

/s/ Andrew Ward