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12 Attorneys for Plaintiff Dario Gurrola

13 **Application for admission
pro hac vice to be filed*

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16 DARIO GURROLA,
17 *Plaintiff,*
18
19 v.
20 DAVID DUNCAN, in his official
capacity as director of the California
Emergency Medical Services
21 Authority, and JEFFREY KEPPLER,
in his official capacity as Medical
22 Director of Northern California
EMS, Inc.,
23 *Defendants.*

No.

COMPLAINT

INTRODUCTION

1
2 1. This is a Fourteenth Amendment challenge to California’s
3 categorical ban on certifying people with two or more felony convictions as
4 emergency medical technicians (EMTs). There is no rational basis for a
5 blanket, lifetime prohibition on people with two felony convictions—including
6 old and irrelevant convictions—becoming certified EMTs. And the prohibition
7 is doubly irrational because California trains and uses prisoners with felony
8 records to fight wildfires, and it allows people with felony records to serve as
9 seasonal or volunteer firefighters. Yet, because fulltime firefighting usually
10 requires EMT certification, the state effectively prohibits these same people
11 from pursuing firefighting careers. This irrational prohibition does not pass
12 constitutional muster.

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

21 3. That is unconstitutional. Under the Fourteenth Amendment,
22 laws must, at a minimum, be rational. It is irrational for the state to
23 categorically prohibit every person with two felony convictions from being

1 certified as EMTs, no matter the crimes or the circumstances since. This
2 harsh restriction does nothing to protect the public. It just makes it harder for
3 people like Dario to work toward a better life. Dario thus seeks a judgment
4 declaring California's ban unconstitutional, enjoining its application, and
5 allowing him to pursue EMT certification.

6 **JURISDICTION AND VENUE**

7 4. This is a civil-rights action brought under the Fourteenth
8 Amendment to the U.S. Constitution; the Civil Rights Act of 1871, 42 U.S.C.
9 § 1983; and the Declaratory Judgment Act, 28 U.S.C. § 2201. Plaintiff seeks
10 declaratory and injunctive relief against the enforcement of California's total
11 ban on people with two felony convictions obtaining EMT certifications, 22
12 Cal. Code Regs. § 100214.3(c)(3), and the policies and practices of the
13 California Emergency Medical Services Authority and Northern California
14 EMS in enforcing these provisions, which, both facially and as applied, violate
15 Plaintiff's constitutional rights.

16 5. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal-
17 question jurisdiction) and 1343(a)(3) (civil-rights jurisdiction).

18 6. Venue is proper under 28 U.S.C. § 1391(b)(1)–(2). As described
19 below, Plaintiff and Defendants all reside in this district, and the events at
20 issue arose in this district.

21 **PARTIES**

22 7. Plaintiff, Dario Gurrola, is a seasonal firefighter living in
23 Alturas, California.

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

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

8 15. Eventually, as Dario's twenties were ending, he realized he had
9 to change. He accepted full responsibility for his past convictions, which he
10 believes resulted from his own bad choices. He cut ties with his neighborhood
11 friends. He reconnected with his father, a retired San Diego sheriff. He
12 consistently attended church, which he has done ever since because his faith
13 is the most important part of his life. And he returned to school, focused on
14 becoming a first responder.

15 16. Nearly a decade ago, Dario turned his life around.

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

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

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

1 19. In the past decade, Dario earned exceptional firefighting and
2 EMT credentials.

3 20. In 2013 and 2015, Dario successfully served as a seasonal
4 firefighter for the U.S. Forest Service.

5 21. In 2017, he completed a 212-hour EMT basic training course.

6 22. That same year, he also worked as a certified medical transport
7 driver.

8 23. In 2018, he completed firefighter training at San Pasqual
9 Reservation Fire Academy.

10 24. Then he completed further courses in firefighting, fire behavior,
11 risk assessment, and airway and defibrillation rescue. He has dozens of
12 certifications.

13 25. In 2019, he successfully served as a seasonal firefighter at the
14 Cal Pines Fire Department in Alturas.

15 26. And he sat for, and passed, a test with the National Registry of
16 Emergency Medical Technicians.

17 27. Finally, after preparing for nearly a decade, Dario applied to
18 Northern California EMS for EMT certification.

19 28. He was denied.

20 29. Dario appealed and represented himself in a hearing before an
21 administrative law judge.

22 30. Dario brought evidence of rehabilitation to the hearing,
23 including certificates from his firefighting and EMT training. He brought

1 three letters showing his good character, including one from a fire department
2 captain who called Dario “professional, courteous, compassionate and
3 respectful.”

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

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

12 33. In short, given his experience fighting fires in custody and
13 seasonally, Dario wants to become certified as an EMT and, ultimately, to
14 become a career firefighter.

15 34. But because of his criminal record, California forever prohibits
16 Dario from being certified as an EMT.

17 35. California’s prohibition also effectively prohibits Dario from
18 becoming a career firefighter because most of California’s 900-plus fire
19 departments require an EMT certification for career positions.

20 36. Granting Dario an EMT certification would not empower him to
21 harm anyone or break any law. Granting him an EMT certification would
22 pose no risk to society.

1 ***C. The Conservation Camp Program***

2 37. Dario is not alone. California newspapers have repeatedly
3 highlighted the problem that California-trained inmate firefighters are
4 essentially prohibited from later working as career firefighters because of the
5 EMT restrictions.³

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

10 39. Founded during World War II, the program aims to help inmates
11 succeed after release. As a Corrections Department spokesman put it, “Our
12 primary mission as a corrections system ... is to provide inmates with skills to
13 improve their lives when they leave.”⁴

14 40. Inmates are admitted case-by-case. Only inmates with sustained
15 good behavior, and who have taken classes on rehabilitation, are allowed.

16 41. Inmates receive the same training, education, and equipment as
17 seasonal firefighters with CAL FIRE.

18 42. The training includes a week of classroom instruction, a second
19 week of field exercises, and more, ongoing training. Inmates learn about fire
20

21

³ See, e.g., Adesuwa Agbonile, *Inmates help battle California’s wildfires. But*
22 *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
23 *chance at full-time jobs* (L.A. Times Nov. 1, 2019).

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

1 safety, hand-tool use, teamwork, and crew expectations. Inmates are also
2 evaluated for physical fitness.

3 43. Then, like civilian firefighters, inmate firefighters work to
4 protect the homes and lives of their fellow Californians.

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

7 45. The fire camps use thousands of inmates each year—there were
8 about 2,150 authorized to fight fires in 2019.

9 46. In 2016, inmate firefighters outnumbered seasonal CAL FIRE
10 firefighters about two to one.⁵

11 47. Each year, inmate firefighters perform over three million hours
12 of emergency response work, saving California around \$90 million annually.

13 48. In 2018, inmate firefighters helped respond to the Camp Fire,
14 the deadliest wildfire in California history.

15 49. Inmate firefighters are paid a base rate of about two to five
16 dollars per day, plus another dollar per hour when they are fighting fires.
17 California civilian firefighters earn an average of \$73,860 per year plus
18 benefits.

19 50. After a juvenile proceeding, Dario served in a fire camp when he
20 was 19. He fought two fires there, one of them major. He remembers the
21
22

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

1 captain saying, “If you ever want to change your life, this is something that
2 you can do.”

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

6 **II. California Irrationally Bans Ex-Felons from EMT
7 Certification.**

8 52. California effectively prohibits ex-felons from receiving EMT
9 certification.

10 53. California uses inmates as firefighters to give them useful job
11 training. But, once they are released, California effectively prevents them
12 from becoming firefighters because EMT certification is a prerequisite for the
13 job in the vast majority of fire departments.

14 54. For people with two felonies like Dario, this ban lasts forever, no
15 matter what.

16 55. This irrational system stems from 22 Cal. Code Regs. § 100214.3.

17 56. Under 22 Cal. Code Regs. § 100214.3(c)(3), an EMT certification
18 “shall” be denied if the applicant “[h]as been convicted of two (2) or more
19 felonies.”

20 57. Subsection 100214.3(c)(3) applies even to ex-offenders convicted
21 of multiple felonies for a single incident.⁷

22 ⁶ Agbonile, *supra* n.3.

23 ⁷ Further, under 22 Cal. Code Regs. § 100214.3(c)(6), an EMT certification
“shall” be denied if the applicant “[h]as been convicted and released from
incarceration for said offense during the preceding ten (10) years for any

1 58. Medical directors of local emergency medical services agencies,
2 including Defendant Kepple, must and do follow this regulation. Dario's
3 application is just one example.

4 59. But this categorical, lifetime ban on everyone with two felony
5 convictions is not rationally related to EMT work.

6 60. "Emergency Medical Technician" means "an individual trained
7 in all facets of basic life support."⁸

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

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

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

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

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

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

19
20 _____
21 offense punishable as a felony." Unlike the lifetime ban for two felonies, this
22 separate ten-year ban includes convictions even for misdemeanors that could
have been charged as felonies. Between these two bans, it is close to
impossible for any ex-felon to receive EMT certification.

23 ⁸ Cal. Health & Safety Code § 1797.80.

⁹ Cal. Health & Safety Code § 1797.60 (emphasis added).

¹⁰ 22 Cal. Code Regs. § 100063(a).

1 67. EMT certification requires only 170 hours of training.¹¹

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

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

8 70. In recent decades, the number of statutory felonies has
9 skyrocketed.

10 71. Roughly one in twelve American adults has a felony conviction.¹²

11 72. Given the proliferation of felonies in modern criminal law, a
12 particular felony conviction may have no bearing on a person's fitness for
13 EMT certification.

14 73. In fact, California's lifetime ban for two felony convictions harms
15 the public by making it harder for people with felony records to get EMT
16 training and, ultimately, to help others.

17 74. There is no evidence that California's lifetime ban for two felony
18 convictions protects the public from bad EMTs.

19 75. California's lifetime ban for two felony convictions does not
20 protect the public from bad EMTs.

21
22

¹¹ 22 Cal. Code Regs. § 100074(a).

23 ¹² Sarah Shannon et al., *The Growth, Scope, and Spatial Distribution of People With Felony Records in the United States, 1948–2010* (Demography 2017).

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

3 85. Because of the lifetime ban, Dario faces career uncertainty.

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

6 87. Because of the lifetime ban, Dario can work only as a seasonal
7 firefighter. Dario also has to work odd jobs when he would rather be a year-
8 round firefighter.

9 88. To be clear, Dario is not challenging his initial certification
10 denial or seeking damages based on it. He is seeking relief prospectively, for
11 his *next* application, based on the unconstitutional burden the lifetime ban is
12 imposing on him now.

13 89. But for the lifetime ban, Dario would re-apply for EMT
14 certification.

15 90. But for the lifetime ban, Dario could and would satisfy all other
16 requirements for EMT certification.

17 91. But for the lifetime ban, Dario would be granted EMT
18 certification.

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

22 93. If the ban were removed, Dario would pursue his EMT
23 certification.

1 102. Because Dario has two felony convictions and was released from
2 incarceration more than ten years ago, he is similarly situated, in all relevant
3 respects, to people with one felony conviction, any number of misdemeanor
4 convictions, or both who were released from incarceration more than ten
5 years ago.

6 103. People with two or more felony convictions for certain criminal
7 acts are similarly situated to people who have committed the same or similar
8 criminal acts but were not convicted of two felonies.

9 104. Dario is, in all relevant respects, similarly situated to people who
10 committed the same or similar criminal acts but were not convicted of two
11 felonies.

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

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

19 107. The lifetime ban irrationally discriminates between similarly
20 situated people because many ex-felons have been rehabilitated and would
21 present no unique risk to the public if they were certified as EMTs.

22 108. The lifetime ban irrationally discriminates between similarly
23 situated people because people who served sentences for two felonies long ago

1 would present no unique risk to the public if certified as EMTs because
2 recidivism decreases with age.

3 109. The lifetime ban irrationally discriminates between similarly
4 situated people because some people *without* criminal records *would* present
5 risks to the public if certified as EMTs. But they are not barred from EMT
6 certification.

7 110. The lifetime ban irrationally discriminates between similarly
8 situated people because lumping all felonies together irrationally conflates a
9 wide range of conduct and criminal sentences. This is both overinclusive and
10 underinclusive. Many felonies have no bearing on whether someone would be
11 a dangerous EMT. And misdemeanors that do have a bearing on whether
12 someone would be a dangerous EMT do not factor into the lifetime ban.

13 111. The lifetime ban irrationally discriminates between similarly
14 situated people because lumping all felonies together irrationally ignores the
15 reality of the modern criminal justice system, in which people who committed
16 factually identical conduct can and do receive vastly different legal outcomes.
17 Some people who commit conduct that could be charged as two felonies are
18 convicted of only one felony or misdemeanors (or nothing at all) based on
19 charging decisions and plea bargaining.

20 112. The lifetime ban irrationally discriminates between similarly
21 situated people because it does not allow for consideration of the nature and
22 severity of the crimes, the nature and circumstances of an applicant's
23

1 involvement in the crimes, the time elapsed since the convictions, and the
2 degree of the applicant's rehabilitation.

3 113. Because the lifetime ban irrationally discriminates between
4 similarly situated groups of people, it violates the Equal Protection Clause.

5 114. Because the lifetime ban irrationally discriminates between
6 Dario and similarly situated people, it violates the Equal Protection Clause.

7 115. Dario would present no risk to the public if he were certified as
8 an EMT. Certifying Dario—who has protected and continues to protect the
9 public as a non-career firefighter—would benefit the public.

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

14 117. California's lifetime ban on people with two or more felony
15 convictions receiving EMT certification serves no legitimate purpose given the
16 existence of Cal. Health & Safety Code § 1798.200(c)(6).

17 118. Categorically banning people with two or more felony convictions
18 from EMT certification for life makes emergency care less available to
19 Californians.

20 119. Categorically banning people with two or more felony convictions
21 from EMT certification for life makes emergency care more expensive for
22 Californians.

23

1 120. Categorically banning people with two or more felony convictions
2 from EMT certification for life contributes to a shortage of firefighters in rural
3 California areas.

4 121. Categorically banning people with two or more felony convictions
5 from EMT certification for life contributes to recidivism.

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

8 123. Categorically banning people with two or more felony convictions
9 from EMT certification for life is not rationally related to any legitimate
10 government interest.

11 124. Categorically banning Dario from EMT certification for life is not
12 rationally related to the duties of EMTs.

13 125. Categorically banning Dario from EMT certification for life is not
14 rationally related to the duties of firefighters.

15 126. Categorically banning Dario from EMT certification for life is not
16 rationally related to any legitimate government interest.

17 127. Unless Defendants are enjoined from enforcing 22 Cal. Code
18 Regs. § 100214.3(c)(3), Dario will suffer continuing and irreparable harm.

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

20 128. Plaintiff incorporates the preceding paragraphs by reference.

21 129. By categorically banning people with two or more felony
22 convictions from EMT certification for life, Defendants violate the Fourteenth
23 Amendment right to due process of law.

1 130. Due process has both substantive and procedural components.

2 131. The liberty component of the Fourteenth Amendment's Due
3 Process Clause includes the right to choose one's field of private employment
4 and the right to earn an honest living.

5 132. Due process requires that regulations on entry into a profession
6 must be rationally related, not merely to any legitimate state interest, but
7 specifically to the applicant's fitness or capacity to practice the profession
8 itself.

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

11 134. Categorically banning people with two or more felony convictions
12 from EMT certification for life is not rationally related to any legitimate
13 government interest.

14 135. Irrebuttably presuming that people with two or more felony
15 convictions are unfit to be EMTs forever denies due process.

16 136. Dario would present no risk to the public if he were certified as
17 an EMT.

18 137. Certifying Dario—who has protected and continues to protect the
19 public as a non-career firefighter—would benefit the public.

20 138. Categorically banning Dario from EMT certification for life is not
21 rationally related to the duties of EMTs.

22 139. Categorically banning Dario from EMT certification for life is not
23 rationally related to the duties of firefighters.

1 140. Categorically banning Dario from EMT certification for life is not
2 rationally related to any legitimate government interest.

3 141. Irrebuttably presuming that Dario is forever unfit to be an EMT
4 denies due process.

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

9 143. California's categorical bans on people with two or more felonies
10 receiving EMT certification serve no legitimate purpose given Cal. Health &
11 Safety Code § 1798.200(c)(6).

12 144. Unless Defendants are enjoined from enforcing 22 Cal. Code
13 Regs. § 100214.3(c)(3), Dario will suffer continuing and irreparable harm.

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

15 145. Plaintiff incorporates the preceding paragraphs by reference.

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

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

22 148. By categorically banning Dario from EMT certification for life,
23 Defendants violate the Privileges or Immunities Clause.

1 149. Plaintiff recognizes that this argument is foreclosed by the
2 *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873). He preserves it here
3 given the “overwhelming consensus among leading constitutional scholars”
4 that *Slaughter-House* was “egregiously wrong.” *McDonald v. Chicago*, 561
5 U.S. 742, 756–57 (2010) (quoting Br. for Constitutional Law Professors as
6 Amici Curiae, Docket No. 08-1521, 561 U.S. 742 (filed July 9, 2009)).

7 **REQUEST FOR RELIEF**

8 Plaintiff respectfully requests:

9 A. A judgment declaring that 22 Cal. Code Regs. § 100214.3(c)(3) is
10 unconstitutional, both on its face and as applied to him;

11 B. A permanent injunction preventing Defendants from enforcing
12 22 Cal. Code Regs. § 100214.3(c)(3);

13 C. An award of attorneys’ fees, costs, and expenses per 42 U.S.C.
14 § 1988; and

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

17 Dated: June 19, 2020

Respectfully submitted,

18 /s/ Joshua House

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