

# Texas v. EEOC

## Key Facts

### What is this case about?

In November 2013, Texas filed a lawsuit against the Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing employment anti-discrimination laws including Title VII of the Civil Rights Act of 1964. Represented by the Office of the Texas Attorney General, Texas seeks to strip the EEOC of its authority to provide guidance about how employers should use criminal history information when screening job applicants. Texas asks a federal court to declare that certain Texas agencies and other employers have the right to impose absolute bars on hiring persons with criminal convictions, even if they are decades old and unrelated to the job at issue, and without giving any individualized consideration of the job applicant. Texas further seeks a court order that the EEOC lacks the authority to issue "right-to-sue" letters, which are a predicate to victims of employment discrimination being able to file a lawsuit, consistent with the EEOC's guidance. Practically, Texas is using this lawsuit to try and further marginalize Texans with criminal records and make it harder for them to gain employment that is needed to support themselves and their families.



In 2014, the case was dismissed in the district court. However, an appellate court reversed the dismissal and now the case is moving forward in federal court. The NAACP Legal Defense & Educational Fund, Inc. (LDF), National Employment Law Project (NELP), and attorneys from Cloutman & Cloutman LLP, and Levy Ratner PC seek to be involved in the case to protect the guidance from Texas's attack, on behalf of Beverly Harrison, who was denied a job in Texas based on a nearly 40-year old conviction, and the Texas State Conference of the NAACP, which advocates on behalf of individuals with criminal histories.

### Why is the EEOC's guidance necessary?

In recent decades and as a consequence of mass incarceration, the number of Americans who have criminal records has skyrocketed. Today, 70 million people—or nearly 1 in 3 adults—have arrest or conviction records, and 700,000 people re-enter their communities following a term of incarceration every year. About 1 in 3 Black men, compared with 1 in 17 white men, are expected to spend some time in prison in their lifetime.

In Texas alone, approximately 4.7 million people, or nearly 20% of the state's population, will be either arrested or convicted of a crime in their lifetime. Criminal record rates are not distributed evenly throughout Texas's population: Black Americans constitute 27% of drug arrests and 36% of the prison/state jail population yet make up only 11% of Texas's adult population. This racial disparity is not explained by disproportionate rates of criminal activity, but rather, is the result of racial profiling and discriminatory criminal justice policies.

During the same time that arrest and incarceration rates have exploded, employers have increased their use of criminal background checks as a part of their employment screening process. Since 2003, over 90% of employers use background checks and Congress has passed many bills that require criminal background checks for large segments of the American workforce. When these background checks turn up a record, employment prospects plummet: the callback rate drops by half for white applicants and two-thirds for African-American candidates. As a result, upwards of 60% of people who have been incarcerated are unemployed one year after release. This stigmatization of people involved in the criminal justice system slams the brakes on our economy, and reduced the nation's gross domestic product by as much as \$87 billion in 2014 alone.

In light of these troubling developments, in 2012 the EEOC updated its non-binding guidance about how employers should use criminal history information when making employment decisions. The EEOC's bipartisan and commonsense guidance does not prohibit employers from using criminal background checks, or even try to discourage their use. Rather, the EEOC correctly cautions employers not to automatically exclude all applicants with criminal records, but rather to consider factors such as the

nature of the person's offense, the time elapsed since the criminal conduct occurred, as well as the relationship between the criminal conduct and the position sought. The EEOC also warns that employment policies concerning criminal records that unnecessarily exclude large numbers of racial minorities could violate federal anti-discrimination laws. The EEOC's guidance is necessary to ensure that employers use criminal history information in a responsible and non-discriminatory manner in Texas and elsewhere.

## What would happen if Texas's lawsuit is successful?

If this lawsuit is successful, it would leave both employers and people with criminal records worse off. The 2012 guidance, after all, plays a critical role in educating employers and the public about how excluding workers with records can violate federal anti-discrimination law. Without the guidance—which sets forth how Title VII relates to an employer's consideration of conviction and arrest records—businesses would have less clarity and confidence about how to comply with the law. This, in turn, would disadvantage people with criminal records.

Moreover, this lawsuit will not make the public safer. In fact, the opposite is more likely to occur, given that steady employment has been shown to be the single most important factor in lowering recidivism rates.

LDF is representing Beverly Harrison, a 61-year-old grandmother who resides in Dallas. Ms. Harrison was denied a job as a school crossing guard after Dallas County Schools fired her after eight days on the job based on a nearly 40-year old conviction, when Ms. Harrison was only 19 years old. Since this conviction, Ms. Harrison has never been convicted of another crime. Rather, she has worked in several capacities—for the City of Dallas for 28 years, including in the Marshal's Office, and for the Dallas Independent School District as a school cafeteria employee.

LDF is also representing the State Conference of the Texas NAACP. The Texas NAACP is Texas's oldest civil rights organizations with over 70 branches across the state. Denial of employment based on criminal records will prevent its members from re-integrating into their communities and creating stability for themselves and their families.



Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first civil and human rights law organization and has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF's Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF. For more about LDF, visit [www.naacpldf.org](http://www.naacpldf.org).

The National Employment Law Project is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers. For more about NELP, visit [www.nelp.org](http://www.nelp.org).

Levy Ratner, P.C. represents employees in litigation to protect and preserve employee rights, including the right to be free from discrimination in hiring and in the workplace. For more about Levy Ratner, visit [www.levyratner.com](http://www.levyratner.com).

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