

For Immediate Release: August 1, 2017

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Civil Rights & Worker Rights Groups Seek to Defend Landmark EEOC Criminal Records Guidance in Texas Federal Lawsuit

To protect and expand employment opportunities for millions of Americans with arrest or conviction records, the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), the National Employment Law Project, and attorneys from Cloutman & Cloutman LLP and Levy Ratner PC have filed [a motion to intervene](#) in *Texas v. Equal Employment Opportunity Commission* in the U.S. District Court for the Northern District of Texas.

This important case is an attack by the State of Texas on the EEOC’s 2012 [Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions](#) (“Guidance”). The Guidance explains how Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination due to race, ethnicity, or other factors, applies to employers’ consideration of conviction and arrest records in assessing job applicants.

Texas asks the federal court to give it the authority, as an employer, to categorically deny jobs to applicants based on a criminal conviction. 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 Guidance.

“Far too many Americans, disproportionately Black and Latino, are unfairly and unjustly denied jobs based on mistakes that they made decades ago and that are unrelated to the job at hand,” said **Leah Aden, LDF Senior Counsel**. “The EEOC’s Guidance is a critical tool to assist employers with how to use criminal history information in a responsible and nondiscriminatory manner that is both fair to workers and safe for the public.”

If the court grants the motion to intervene, two new defendants will become part of the case: Beverly Harrison and the Texas State Conference of the NAACP.

Ms. Harrison is a 61-year-old African American woman and grandmother who resides in Dallas, Texas. In 2013, she applied for a position with Dallas County Schools (“DCS”) as a school crossing guard, but was terminated after eight days on the job because of a conviction from nearly 40 years before—when she was only 19 years old—even though a court ultimately set aside that conviction and dismissed the indictment after Ms. Harrison completed two years of probation. Ms. Harrison subsequently worked for 28 years for the City of Dallas, including in the Marshal’s Office.

“I am seeking to be a part of this lawsuit because I am deeply concerned that I, and others like me, may be denied jobs in the future in Texas—if the state has its way through this case—based on similar policies to that of DCS that bar individuals like me with criminal records,” said **Ms. Harrison**. “Such absolute bans are absurd given that my conviction is four decades old and I have demonstrated that I can be a valuable and dependable employee and serve my community in Texas.”

The second proposed defendant, the Texas State Conference of the NAACP, is the oldest and one of the largest non-profit organizations in the state. The Texas NAACP works to advance the rights of people with records and help formerly incarcerated individuals successfully rejoin their communities.

“Unnecessary barriers against individuals with criminal records, which Texas seeks to uphold, will continue to deny millions of Texans of a fair chance to earn an honest living, support and protect their families, and rejoin society as full, reformed members of the community,” said **Gary Bledsoe, President of the Texas NAACP**.

“The EEOC Guidance plays a critical role in educating employers and the public about how improperly screening out workers with records violates antidiscrimination law,” said **Christine Owens, Executive Director of the National Employment Law Project**. “By encouraging fair consideration of all qualified job applicants, including those with records, the Guidance helps employers avoid relying on unnecessary selection practices that have a discriminatory effect. It promotes a fair chance for people with records to join the workforce, support themselves and their families, and create a more dynamic and inclusive economy. At the core of the Guidance is a commitment to thoughtfulness and reasonableness when it comes to reintegrating people with records—disproportionately individuals of color—into the workforce, which ultimately benefits all of us.”

These two proposed defendants would underscore—with a real-world perspective—the importance of the Guidance not just to individuals with records, but also to communities of color, employers, and the economy as a whole. Giving voice to these perspectives is all the more important, given that recent changes in the federal government’s litigation and policy positions make it doubtful that the current administration will adequately, let alone zealously, defend the 2012 EEOC Guidance.

“Job applicants deserve to be evaluated based on their ability to perform the job,” said **Robert H. Stroup, a partner in the firm of Levy Ratner, P.C.** “Texas wants the right to treat Ms. Harrison, and people like her, as irredeemable because of a single mistake from decades ago. In reality, she is an asset to her community and to our economy. The Court should permit her and the Texas NAACP to represent their interests in this case, which align with the interests of so many people of color in the State of Texas and beyond.”

The Guidance, which is nonbinding, explains what employer policies may violate Title VII and instructs employers on how best to comply with federal civil rights law when conducting employment background checks. For example, rather than categorically excluding all applicants with a conviction record, the Guidance advises employers to individually assess:

1. the nature of the person’s offense,
2. how much time has passed since the offense, and
3. whether the offense is related to the job sought.

Notably, the 2012 Guidance was adopted by the EEOC with bipartisan support in a 4 to 1 vote.

Within Congress and the courts, there has been a longstanding consensus that Title VII bans policies and practices that have a disproportionate and discriminatory impact on individuals protected under the law. In a U.S. Supreme Court decision from 1971, *Griggs v. Duke Power Company*, the Court concluded that Title VII “proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.”

In the context of criminal records and employment, because Black Americans and Latino Americans are arrested and convicted at much higher rates than their share of the population, the EEOC has long held that blanket policies screening out people with criminal records may violate Title VII. In fact, the EEOC has investigated Title VII claims related to the discriminatory use of criminal history since at least 1969. In addition, the EEOC issued three policy statements on this subject in 1987 and 1990. The agency's 2012 Guidance builds on these well-established court decisions and agency policy statements.

The lawsuit (Case No. 5:13-CV-255-C) is being heard by Judge Sam R. Cummings of the U.S. District Court for the Northern District of Texas (Lubbock Division).

More Resources

- [Motion to Intervene of Beverly Harrison and Texas State Conference of the NAACP](#)
- [Memorandum of Support of Motion to Intervene of Beverly Harrison and Texas State Conference of the NAACP](#)
- [Appendix to Memorandum of Support of Motion to Intervene](#)

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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.

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.

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.