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Civil and Worker Rights Groups File Amicus Brief Defending EEOC Guidance on Use of Criminal Background Checks in Employment

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”), along with the National Employment Law Project (“NELP”), Texas State Conference of the NAACP, and Beverly Harrison, a worker once fired because of a criminal conviction, filed an amicus brief in the United States Court of Appeals for the Fifth Circuit. Their brief defends the U.S. Equal Employment Opportunity Commission’s (“EEOC”) Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions (the “Guidance”), which aims to reduce employment discrimination against people with conviction and arrest records, who are disproportionately people of color.

In February 2018, a federal court issued a limited ruling—which the amicus brief urges the Fifth Circuit to reverse—preventing the EEOC and the U.S. Attorney General from enforcing the Guidance against the State of Texas. If allowed to stand, the ruling would make it more difficult for employers to comply with existing federal civil rights laws and for job-seekers with criminal histories, including more than 70 million people across the country, to secure employment.

The Guidance does not prohibit or discourage employment background checks. Instead, and consistent with decades of federal policy and legal precedent, it encourages employers to consider factors such as the nature of the offense, how much time has passed since the arrest or conviction, the relationship between the criminal conduct and the job sought, and any evidence of the applicant’s rehabilitation. The Guidance warns employers that some policies excluding applicants with records may have a disparate impact on racial minorities and violate Title VII of the Civil Rights Act of 1964.

“The EEOC’s commonsense Guidance is a helpful tool in the hiring process for employers *and* job-seekers seeking a second chance, because more jobs mean both a stronger economy and a chance to provide for families and contribute to communities,” said Leah Aden, Deputy Director of Litigation at LDF. “Everyone loses if this court decision stands. Employers will have less clarity about their compliance with federal law, while applicants and employees with criminal records will be left vulnerable to rejection or dismissal, effectively making them prisoners of their past mistakes. The Guidance should be upheld.”

In addition to defending the Guidance, the brief provides data on the consequences of exclusionary hiring policies for individuals like Beverly Harrison, and for communities of color served by organizations like the Texas State Conference of the NAACP. In 2013, Ms. Harrison was fired as a crossing guard by the Dallas County Schools because of a conviction from 1975.

“One struggles to imagine a more counterproductive and legally problematic set of policies than the sort that Texas champions,” said [Phil Hernandez](#), Staff Attorney at the National Employment Law Project. “Excluding people with records from meaningful employment opportunities is a surefire recipe for slower economic growth, more widespread poverty, increased recidivism, and additional legal liability for employers. That’s why everyone in Texas and across the country—even people without records—have an undeniable stake in preserving the EEOC’s Guidance, which stands atop a strong legal foundation.”

The brief also calls out the U.S. Department of Justice (“DOJ”) for its about-face on the issue of whether hiring policies that disproportionately burden applicants with criminal records can be considered racially discriminatory under Title VII. Until recently, the DOJ shared the EEOC’s long-held view that because people of color are more likely to have conviction and arrest records on account of racial disparities in the criminal justice system, hiring policies that improperly use criminal backgrounds to screen applicants can be considered violations of federal civil rights law. This helped hold employers accountable for policies that have racially discriminatory effects. But on appeal in this case, DOJ no longer stands with the EEOC on this vital point. The amicus brief, however, agrees with the DOJ that Texas’s lawsuit is improperly in federal court and that Title VII—regardless of the outcome of this case—is the law of the land and protects against discriminatory hiring policies, including those related to criminal history.

Read the full brief [here](#).

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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 has been a longstanding champion of economic justice issues, litigating the unanimous decision in *Griggs v. Duke Power Co.*, which established the disparate impact theory of liability in the employment context, and challenging laws and policies that exclude individuals with criminal records from jobs. 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.