



July 20, 2015

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

Together with nearly 200 organizations from across the nation, we wrote you on March 25, 2014, urging strong executive action to ensure that both federal agencies and federal contractors are leading the way to open up employment opportunities for qualified job-seekers who have an arrest or conviction in their past. Today, we renew our call to you, Mr. President, to lead the nation as a model employer, and we are writing to detail several of the necessary components of a robust federal policy.

Indeed, last week at the NAACP convention, you endorsed “ban the box” when you said, “Let’s follow the growing number of our states, and cities, and private companies who’ve decided to ban the box on job applications so that former prisoners who have done their time and are now trying to get straight with society have a decent shot in a job interview.” It was not the first time your administration has stated in clear and compelling terms that the vast barriers to employment of people with arrests and conviction records are in need of significant reform.

More than a year ago, in May 2014, the My Brother’s Keeper Task Force concluded that “[w]e should implement reforms to promote successful reentry, including encouraging hiring practices, such as ‘Ban the Box,’ which give applicants a fair chance and allows employers the opportunity to judge individual job candidates on their merits as they reenter the workforce.” And in June 2014, the Attorney General’s Reentry Council called for “mak[ing] the federal government a model employer” as a key feature of the federal reentry agenda. More recently, in response to the urgent calls to invest in jobs in Baltimore and other communities ravaged by unemployment, police brutality, and over-criminalization, Labor Secretary Tom Perez stated, “One of the greatest challenges of getting people into jobs in Baltimore city is the reality that so many people have a criminal history.”

It is past time for your administration to make these powerful pledges a reality by leveraging the federal government’s considerable resources to reform the hiring process of workers employed by federal contractors and federal agencies, which account for over 20 percent of the entire U.S. workforce. Just since March, there has been a surge of bipartisan activity and momentum in support of ban-the-box and fair-chance hiring. For example, Koch Industries banned the box as applied to its Georgia-Pacific LLC operations and all its other companies employing more than 60,000 workers, thus joining Walmart, Target, and other ban-the-box employers. Republican administrations in Georgia and Ohio embraced ban-the-box this year, as have the states of Virginia, Oregon, and Vermont. Today, 18 states and more than 100 cities and counties have adopted ban-the-box and fair-chance hiring reforms, including seven states that cover both private and public sector employers, as well as a number of major cities that do so, such as New York City.

We are renewing our call to you to issue an Executive Order regulating federal contractors and a Presidential Memorandum regulating the federal hiring process. In recent months, over 27 Senators and more than 70 members of the House of Representatives have also written to you expressing strong support for executive action. As described in the September 2014 memorandum presented to White House officials by All of Us or None and the PICO National Network and the January 2015 report prepared by the National Employment Law Project (“Advancing a Federal Fair Chance Hiring Agenda”), such action should include the following key components:

1. Postpone the Conviction-Record Inquiry Until the Conditional Offer of Employment

Consistent with the stated policy of the Office of Personnel Management (OPM), any questions regarding an individual’s conviction history should not be authorized by private contractors and federal agencies until the conditional-offer stage of the hiring process. If the question is posed earlier in the hiring process, such as during the job interview, it produces far less clarity for both employers and workers and more opportunity for unconscious bias to enter into the hiring process. Absent a clear standard limiting consideration of the information to the end of the hiring process, it is also far more difficult to enforce the ban-the-box protection, thus undermining the policy’s effectiveness. In addition to the OPM policy, two states (Minnesota and Hawaii) and more than 40 cities and counties (including New York City, Washington, D.C., and several D.C. metropolitan areas employing large numbers of federal contract workers) expressly postpone the conviction-history inquiry until the conditional-offer stage of the hiring process.

2. Incorporate the EEOC Arrest and Conviction Guidelines

It is also critically important that both the Executive Order and Presidential Memorandum expressly incorporate the key features of the guidelines adopted by the U.S. Equal Employment Opportunity Commission (EEOC) in April 2012 regulating the use of arrest and conviction records in the hiring process, which are designed to help employers avoid violations of Title VII of the Civil Rights Act of 1964. As required by the EEOC guidelines, private contractors and federal agency officials should be expressly directed to take into account the age of the offense, the nature of the offense, and whether the offense is directly related to the job; and to conduct an “individual assessment” providing the candidate an opportunity to present evidence of rehabilitation and verify the accuracy of the record.

Absent a strong and enforceable policy, federal contractors and federal agencies will continue to violate these basic standards of law and fairness. For example, according to a 2007 letter sent to OPM by the EEOC, the federal “suitability” regulations (5 CFR Section 731.202), which detail the factors federal agencies consider in the background check process, do not fully comply with the mandates of Title VII of the Civil Rights Act of 1964.¹ In addition, a recent lawsuit filed by the NAACP in New York documented that several of the nation’s largest information technology employers—all federal contractors—impose blanket restrictions on hiring of people with conviction records.² Until it was recently forced under public pressure to rescind its policy, Apple—another major federal contractor—precluded anyone with a felony from being employed in the construction of its new Cupertino campus. Eight states and more than 50 cities and counties (including New York City, Washington, D.C., and several surrounding D.C. metropolitan areas

¹ Letter to Anna Mazzi, OPM Deputy Associate Director from Peggy Mastroianni, EEOC Associate Legal Counsel, dated March 19, 2007.

² *NAACP New York State Conference Metropolitan Council of Branches v. Philips Electronics North America Corp.*, filed in the Supreme Court of the State of New York on June 26, 2015.

employing large numbers of federal contract workers) have incorporated the EEOC guidelines into their fair-chance policies.

3. Actively Engage Directly-Impacted Communities

Finally, we strongly urge the Administration to actively engage the formerly incarcerated and their leaders to play a key role in shaping the initiative and lending their voices to an aggressive public outreach and implementation campaign of the new federal policy.

We appreciate your strong public commitments to the importance of expanding employment opportunities for people with records. We urge you to begin with the federal government itself.

Sincerely,

ACLU
AFL-CIO
All of Us or None/ Legal Services for Prisoners with Children
Leadership Conference on Civil and Human Rights
National Employment Law Project
PICO National Network
PolicyLink
Southern Coalition for Social Justice