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Unqualified Upon Reentry: Legal Protections against Discriminatory Hiring Practices & Criminal Convictions

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Abstract

One in three adults, as many as 100 million in the United States, are paralyzed by criminal records, and shunned from legitimate job opportunities.¹ Ex-offenders face the cruel irony of being denied the most important resource for turning their lives around – a job.² As a result, 2.7 million children have a parent behind bars.³ These numbers are a symptom of decades of over-criminalization and recidivism, which has dramatically increased the number of people with criminal records in the working-age population and created serious barriers to employment, particularly in communities of color.⁴ With 56.6 million Latinos in the United States,⁵ representing nearly half of convicted federal offenders, Latinos are often disadvantaged by the pervasive use of unregulated criminal records and discriminatory hiring practices that in effect violate Title VII of the Civil Rights Act of 1964. This exclusion of Latinos with criminal records from the workforce, severely limits their social, economic, and political capital. With criminal justice reforms occurring across the nation, and surprising bipartisan support in many cases, now is an opportune moment for legislators and policy makers to act. This paper proposes policy recommendations to develop fairer employment practices for ex-offenders.

"It is relevant to find out whether somebody has a criminal record. We're not suggesting ignore it...[w]hat we are suggesting is that when it comes to the application, give folks a chance to get through the door. Give them a chance to get in there so they can make their case."

- President Barack Obama, Rutgers University, November 02, 2015

Introduction

As a result of shifting policies and efforts to launch the war on drugs, from 1980 to 2008, the number of people incarcerated in America quadrupled from roughly 500,000 to 2.3 million people.⁶ Using data from the U.S. Bureau of Justice Statistics, the Center for Economic and Policy Research estimates that there were between 14 and 15.8 million working-age people with felony convictions in 2014, who between 6.1 and 6.9 million were former prisoners.⁷ By 2015, the U.S. Department of Justice estimated that over 9 million people were released from more than 3,000 county and local jails each year.⁸ This increased policing and incarceration has disproportionately affected the Latino and African American communities. Whites make up 61.6 percent of the U.S. population, and comprise 33.8 percent of the incarcerated population. Whereas, Latinos have reached 17.6 percent of the nation's

population, but make up 21.6 percent of the incarcerated population.⁹ Of the imprisoned Latino population, 92.5 percent of males and 95 percent of females are of prime working-age (ages 18 to 54 years old),¹⁰ and are excluded from contributing to the labor force and their household incomes. As a result, Latinos are disproportionately disadvantaged by discriminatory hiring practices that severely impact their successful reentry into the workforce.

This paper explores how criminal convictions pose real barriers to employment for the disproportionately incarcerated Latino community and proposes solutions for uniform and fairer opportunities at successful reentry. Part I of this paper provides background and context of the economic impact of criminal convictions, and the risk unemployment plays in rates of recidivism after reentry. Part II highlights the current barriers to employment, the growth of criminal background checks,

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and employer bias against those with criminal histories. Part III summarizes past efforts to lift the burdens ex-offenders face upon reentry, both at the state level and at the federal level. Part IV discusses the current legislative efforts sought to encourage progressive policies that eliminate the stigma of incarceration, and the opposition to ban-the-box policies due to its unintended consequences. Part V offers an inmate's perspective, anticipating the realities they have struggled with each time they are released, the stress of securing a job, and the drug abuse and criminal activities that ensues after many failed attempts. Finally, I conclude with policy recommendations that should be taken both at the state and federal level, among private and public employers, to remove the criminal conviction inquiry in job applications, as well as limiting this line of questioning until after a conditional offer to employment is made. To ensure we adopt uniform regulation of hiring practices with respect ex-offenders, I invite the possibility of amending Title VII of the Civil Rights Act of 1964 to reflect these protections, by incorporating ban-the-box legislative policies that prohibit unnecessary disclosure of criminal records. Ultimately, when the United States has five percent of the world's population, but twenty five percent of the world's prison population,¹¹ it is imperative that legislators take affirmative steps to give this growing number of individuals that second chance at redemption.

I. The Costs of Convictions & The Risk of Recidivism

In April 2017, The Bureau of Labor Statistics estimated that 4.4 percent of the U.S. population was unemployed, while the Latino unemployment rate reached a staggering 5.2 percent.¹² Coupled with the incarcerated working-age population discussed above, these are staggering unemployment figures,

which further highlight the Latino's community's economic losses, but also that of the larger U.S. economy. Generally, those being released from jail, are already lacking employment training, high educational achievement, and extensive support systems, which inadvertently produce very real barriers to secure employment, and greatly contributes to high recidivism rates.

The strong bipartisan support for criminal justice reform has come in part after recognition that the growing prison population is too costly to sustain. According to the National Employment Law Project (NELP), corrections at each level of government has increased 660 percent from 1982 to 2006, consuming \$68 billion a year,¹³ which suggests a reduction in output of goods and services of people with felonies and prison records is estimated between \$78 and \$87 billion in losses.¹⁴ The costs of having an entire ex-offender population dependent upon government services because they are unemployed, and later succumb to recidivism, mirrors if not multiplies that expense long-term.¹⁵

Recidivism refers to a person's relapse into criminal behavior and is the biggest threat to an inmate's success of reentry.¹⁶ Recidivism "is measured by criminal activity that results in rearrest, conviction or return to prison with or without a new sentence during a three-year period following the prisoner's release."¹⁷ As law professor Dallan Flake explains, "within five years of release, more than three fourths of ex-prisoners are rearrested, and between 40% and 50% of ex-prisoners return to prison," where employment is one of the strongest predictors of recidivism.¹⁸ He stresses that "any hope of lowering the United States' recidivism rate will require major changes to federal employment discrimination laws to give ex-offenders greater employment opportunities."¹⁹

The growth of the prison population and high recidivism rates demonstrate the paralyzing impact of limiting employment opportunities for Latinos with criminal records. Latinos are the largest minority group and one of the fastest-growing, numbering 56.6 million in 2015.²⁰ Between 2009 and 2013, Latinos accounted for 43.4% of total jobs growth, with U.S.-born Latinos driving most of that job growth.²¹ Inevitably, Latinos will have a strong impact on the nation's economy, with the group's purchasing power on the rise.²² Latinos help mobilize entire industries, from agriculture, construction, to service jobs, and their large contributions to this country's gross domestic product will be impeded by criminal records that inhibit this important group's upward mobility. According to legal scholar Gabriel Chin, "outside the personal hardships of incarceration, the most severe and long-term effects come after release, marked by the struggles of reentry, from loss of civil rights, public benefits, to employment opportunities."²³ As Chin's argument suggests, a large part of the unemployed ex-offender population could benefit from more inclusive employment hiring practices and rethinking our approach to criminal justice in the United States.

II. Barriers To Employment

The Expansion of Criminal Records
Although restrictions on ex-offender employment make sense in some settings, in many situations a person's criminal record has little or no bearing on job performance, which therefore warrants protections under the law. The Internet and technological advances have allowed for the growth of hundreds of companies who offer low-cost criminal background checks online, intensifying the scrutiny that burdens ex-offenders.²⁴ These changing hiring conditions make it extremely easy and inexpensive for employers who request criminal history records when hiring

For Latinos, the likelihood of coming into contact with the criminal system is increased by a variety of hardships; single parent homes, low socioeconomic status, illiteracy and poor educational systems, lacking legal immigration status, as well as underserved neighborhoods that push them towards criminality. All of this is compounded by employer biases against people with criminal records.

applicants. One survey showed that more than 90% of companies reported using criminal background checks in making their hiring decisions.²⁵

The problem with criminal records tied to an individual's name, is that not all arrests will lead to convictions, and not all background check databases will provide for this important distinction. Generally, a criminal record search can produce either "rap sheets" or court records. Rap sheets are based on arrests and bookings stored with the Federal Bureau of Investigations and state databases. Prior to the tech boom, rap sheets were only accessible to law enforcement and very few public groups concerned with public safety, such as gun dealers, or volunteer groups working with children.²⁶ By contrast, court records were always accessible to the public, but were often expensive both in time and costs to obtain. Nevertheless, the country's growing online presence, coupled with the government's efforts to make its services quickly accessible online, did away with many of these hurdles and provided access to a vast amount of raw data.

Moreover, the rise and focus on national security stemming from the terrorist attacks of September 11, 2001 led to the expansion of public agencies and private companies accessing criminal records. National security laws, like the Patriot Act, mandated background checks for an estimated 3.5 million employees, from public to private companies, and even many working with hazardous materials.²⁷ For many employers, criminal background checks are ways to ensure workplace safety and reduce security risk, which a prospective or current employee may pose on the job.²⁸ While some studies show that, on average, ex-offenders are

more likely than non-offenders to have engaged in violent or dishonest behavior,²⁹ there is disagreement on whether or not criminal records accurately predict negative work behavior.³⁰ Ironically, an employer's attempt to safeguard the workplace not only bars many who pose little to no risk (age old convictions, minor drug offenses, or non-violent crimes), but also denies ex-offenders the opportunity for sustainable employment, which is shown to reduce crime rates and increase public safety.³¹

Individual Characteristics & Employer Bias

It is never just one thing. For Latinos, the likelihood of coming into contact with the criminal system is increased by a variety of hardships; single parent homes, low socioeconomic status, illiteracy and poor educational systems, lacking legal immigration status, as well as underserved neighborhoods that push them towards criminality. All of this is compounded by employer biases against people with criminal records. Of 3,000 employers surveyed in four metropolitan areas, "almost 20% answered they would 'definitely not' hire an applicant with a criminal record, and 42% indicated they would 'probably not' do so."³² Moreover, these percentages were much higher compared to employers who would either definitely or probably not hire individuals who are welfare recipients (8%), those with only a GED (3%), a person with a sporadic work history (41%), or those who have been unemployed for more than a year (15%).³³ From Los Angeles, to Milwaukee, and New York, multiple studies confirm the apprehension and reluctance of hiring ex-offenders, even as much as giving callbacks to those with criminal records.³⁴ Employers tend to make character assumptions that an ex-offender

will revert to criminal behavior, that they are untrustworthy or unreliable, are less productive employee, and ultimately raises their risk of negligent hiring claims.³⁵ Overcoming these biases is difficult, which is why ex-offenders need to be given the opportunity to make their case and at least be considered on equal footing to non-offenders at the application stage. The reality is that there are a number of local, state, and federal laws that disqualify or substantially impede ex-offenders from obtaining certain jobs or occupational licenses, and many are well-founded.³⁶ However, there needs to be reasonable implementation of these laws that do not drastically impede ex-offenders from getting back on their feet, or even getting a job interview.

III. Riding the Wave of Criminal Justice Reform

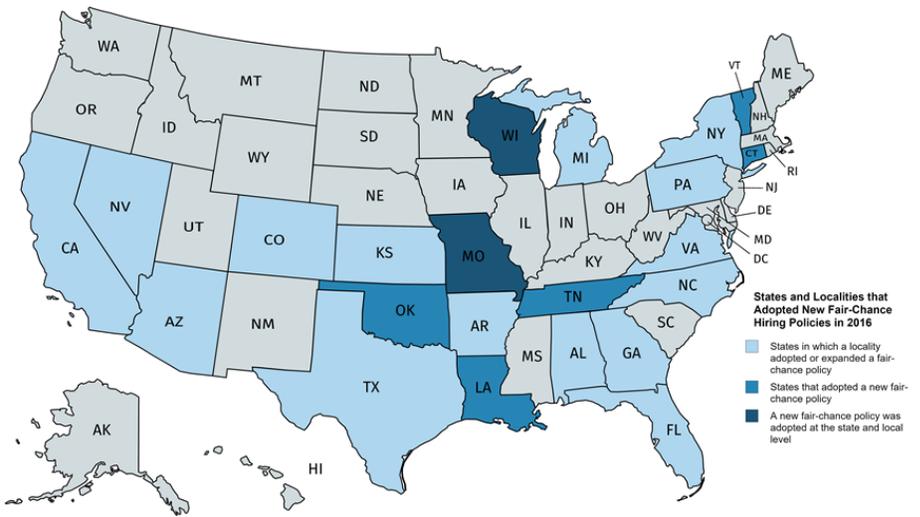
State Efforts and Legislation

In 1998, Hawaii was the first state that recognized the need to open the door to ex-offenders, and limited criminal background questions on initial employment applications.³⁷ Since then, state efforts have taken many different approaches to safeguard the state economy, an employer's burden and expense, as well as an ex-offender's civil rights. In furtherance of this goal, in 2004 a national civil rights group called "All of Us or None of Us" began what is now known as "Ban the Box" campaign.³⁸ "Ban the Box" seeks to remove criminal background questions, or the box required to be checked on job applications, and delay criminal inquiries until further in the hiring process. This gives ex-offenders an opportunity to interview and explain why they are disqualified for employment before being disqualified by an employer's bias.³⁹

Today, more than 150 cities and counties have passed laws, and adopted ban-the-box-style policies in order to remove barriers to employment for qualified workers with criminal histories.⁴⁰ The number of states that have passed ban-the-box legislation continues to grow. These laws have varied by what types of employers are covered (public vs. private) and what type of information a potential employer may access, and when. According to NELP, a total of 24 states, representing nearly every region of the country, have adopted statewide policies that remove the conviction history question from the job application.⁴¹ Even more promising, is that nine of these states have also mandated the removal of conviction history questions from job applications for private employers.⁴² New York City's recently-enacted Fair Chance Act is an example of one such progressive hiring policy: it prohibits employers from inquiring about a person's criminal background in most cases until after a conditional offer of employment is made.⁴³

Federal Efforts and Legislation

On a national level, there have been a number of efforts that parallel the state legislature and grassroots efforts to reduce barriers to employment. For example, as early as 1966, the U.S. Department of Labor created the Federal Bonding Program (FBP) to incentivize employers to hire individuals whose backgrounds could potentially bear significant barriers to securing employment.⁴⁴ The FBP provides employers with fidelity bonds, free-of-charge bond insurance against theft, forgery, larceny, and embezzlement, designed to offset any losses due to employee theft of money or property.⁴⁵ Decades later in 2007, Congress passed the Second Chance Act, which allows the federal government to provide substantial resources to state, and local governments and community organizations to help ex-offender reentry.⁴⁶ The Second Chance Act focuses on four imperative areas: jobs, housing, substance abuse/mental health treatment and families. In January 2011, U.S. Attorney General Eric Holder established a cabinet-level federal interagency Reentry Council tasked with "coordinating re-



National Employment Law Project (NELP), 2016.

entry efforts and advancing effective re-entry policies."⁴⁷ There are a number of established initiatives aimed at encouraging the employment of ex-offenders. One such initiative is the Work Opportunity Tax Credit (WOTC) program, which allows employers the opportunity to claim approximately \$1 billion in federal tax credits each year for hiring individuals from certain "target groups," which include qualified ex-felons.⁴⁸

In November 2015, President Obama endorsed "ban-the-box" policy by directing federal agencies to delay inquiries into job applicants' records until later in the hiring process.⁴⁹ A number of affirmative efforts from different federal departments were aimed at ex-offenders' reentry needs, from housing assistance, educational grants and training programs, to employment hiring practices.⁵⁰ The mandate directed the Office of Personnel Management (OPM) to modify its rules delaying criminal history questions.⁵¹ While most agencies have taken this approach, this executive mandate sent a unified message for government non-discriminatory hiring practices, until Congress passes bipartisan legislation that would "ban-the-box" for federal hiring and hiring by federal contractors. In fact, the Fair Chance Act was introduced to the Senate in early April

2017, in efforts to uniformly prohibit federal agencies and contractors from requesting that an applicant for employment disclose criminal history record information before they receive a conditional offer.⁵²

This unified message of legal protections against unnecessary criminal background inquiries is imperative, to alleviate confusion among employers, and provide ex-offenders with the basic confidence that is necessary to begin turning their lives around – the reassurance that they in fact get a second chance. The reality is that despite occupying one of the most legally marginalized statuses in America, ex-offenders are not considered a suspect class for equal protection purposes, and as such do not receive the heightened scrutiny when subject to state-sponsored discrimination, as would race or national origin.⁵³ Actually, "the majority of laws and regulations concerning ex-offender employment are *exclusionary in nature*"; barring ex-offenders from entire industries, certain occupational licensing, and even codifying the background check requirement for certain jobs.⁵⁴ Generally, it is under Title VII of the Civil Rights Act of 1964, that an employer can be held liable for treating people with similar criminal records differently, or for maintaining a policy that screens

individuals based on criminal history – but only if such differential treatment is otherwise tied to race, color, religion, sex, or national origin.⁵⁵

The Equal Employment Opportunity Commission (EEOC) is charged with enforcing Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin. Having a criminal record is not listed as a protected basis in Title VII. Therefore, whether a covered employer's reliance on a criminal record to deny

crimination and its burdens of proof, affording ex-offenders a legal remedy against discriminatory hiring practices. Consequently, there is now a Title VII disparate impact liability claim to be raised, where the evidence shows that a covered employer's criminal record screening policy or practice disproportionately screens out a Title VII-protected group and the employer does not demonstrate that the policy or practice is job related for the positions in question and consistent with business necessity.⁵⁸

employers, have led many courts to also hold employers liable under state negligent hiring, retention, and supervision laws.⁶⁴ Even among states that have enacted statewide protections for ex-offenders, the type and extent of protections vary, as well as the standards used to evaluate such protection. As such, law professor, Dallan Flake, goes as far as proposing amending Title VII of the Civil Rights Act, because "workplace discrimination against ex-offenders is a nationwide problem and therefore demands a national solution."⁶⁵

IV. Moving Us Forward

Ban the Box Policies

In an effort to standardize criminal reform in the country, including protections against discriminatory hiring practices, Congress has introduced a number of bills to resolve these inequities at the local and state level. In 2015, Senator Rand Paul, along with Senator Cory Booker, introduced federal legislation called the Record Expungement Designed to Enhance Employment (REDEEM) Act of 2015 that would make it easier for juveniles and adult offenders to expunge charges from their record that are nonviolent in nature.⁶⁶ During its proposal, Sen. Paul reiterated that when the largest numbers being incarcerated are people of color, "[t]he biggest impediment to civil rights and employment in our country is a criminal record."⁶⁷ The legislation, would "[e]ncourage states to raise the age of criminal responsibility to 18 years of age; expunge or seal the records of juveniles who commit non-violent crimes before they turn 15; place limits on the solitary confinement of most juveniles; and establish a system to allow eligible nonviolent criminals to petition a court to ask that their criminal records be sealed."⁶⁸ These efforts align with ban-the-box laws and policies across the country by limiting information required to be disclosed.

Most significantly, on September 10, 2015 federal ban the box legislation was introduced with bipartisan support. The Fair Chance Act would prohibit all branches of the federal gov-

Actually, "the majority of laws and regulations concerning ex-offender employment are *exclusionary in nature*"; barring ex-offenders from entire industries, certain occupational licensing, and even codifying the background check requirement for certain jobs."⁵⁴

employment violates Title VII depends on whether it is part of a claim of employment discrimination based on race, color, religion, sex, or national origin. Title VII liability for employment discrimination is determined using two analytic frameworks: "disparate treatment" and "disparate impact." Under disparate treatment, a covered employer is liable for violating Title VII when the applicant demonstrates that the employer's policy or practice treated them differently specifically because of their race, national origin, or another protected basis. However, under disparate impact, a covered employer is liable for violating Title VII when the applicant demonstrates that the employer's neutral policy or practice has the *effect* of disproportionately screening out a Title VII-protected group and the employer fails to demonstrate that the policy or practice is job related for the position in question and consistent with a business necessity.⁵⁶ But it was not until 1971, in *Griggs v. Duke Power Company*, that the Supreme Court first recognized that Title VII provided for disparate impact claims.⁵⁷

By 1991, Congress amended Title VII and codified the above analysis of dis-

As such, the EEOC has been aggressive in challenging many employer practices with respect to the use of criminal records in the hiring process. The United States' large incarceration numbers to date, which have been proven to disproportionately affect blacks and Latinos, supports the finding that criminal record exclusions have an effectively disparate impact based on race and national origin.⁵⁹ Thus, on April 25, 2012, the EEOC issued revised enforcement guidance about using criminal histories in making employment decisions, and endorsed the removal of criminal history questions from applications as a best practice.⁶⁰ Remarkably, this guidance marked the first time the EEOC stated that certain uses of an applicant's criminal history constitute discrimination.⁶¹ Under the guidance, ex-offender applicants who believe that they have been wrongfully discriminated against due to their criminal histories now have legal redress.⁶² The provision allows for individuals in this situation to go to an EEOC office to file a complaint, which the EEOC can then investigate and prosecute.⁶³

However, the struggle to balance the civil rights of the employable candidate with the responsibilities owed by

ernment and federal contractors from asking a job applicant about their criminal history until a conditional offer of employment has been made.⁶⁹ This legislation, recently re-introduced as S. 842, would create an exception for positions related to national security and law enforcement, helping balance the concern for workplace-related violence, which can be detrimental to certain employment roles.⁷⁰ The Fair Chance Act has received bipartisan support from both chambers of Congress.

On the other end of the criminal record continuum, existing legislation aims to create a leveled-playing field for ex-offenders, specifically limiting employer access to applicants' criminal histories by restricting the information that commercial background check providers can expose. For example, The Fair Credit Reporting Act of 1970 (FCRA) specifies that commercial providers of criminal records cannot report arrest records that do not result in a conviction, where the arrest occurred more than seven years ago.⁷¹ However, convictions may be reported indefinitely, even after a significant period of time has passed. Regardless, even with these federal regulations, enforcement of FCRA standards has not been consistent, and there is no way to correct or change inaccurate information issued by these providers.⁷² Thus, many commercial providers of criminal background checks are providing wrong information to employers, costing many applicants, even those who may otherwise be clear of criminal convictions, potential job security.

Opposition to Ban-the-Box Policies

Nevertheless, critics of the ban-the-box policies are quick to point out the obvious, even after delays into criminal history inquiries, "Employers still don't want to hire ex-offenders."⁷³ These "policies can limit the information that employers have access to, and thus subject employers to liability not only for refusing to hire ex-offenders, but also for hiring ex-offenders who later break the law."⁷⁴ Understandably, it is an employer's primary goal to hire peaceful, honest, and reliable employees to ensure the success of the busi-

ness and workplace safety. As such, the limitation of an applicant's information, which can provide relevant evidence of that, is crucial. According to critics of the policies, employers are then left to "'statistically discriminate,' using the observable information (college, career training, age, etc.) that is most correlated with the unobservable information of interest to sort applications into 'probably job-ready' and 'probably not job-ready' piles."⁷⁵ These pieces of information on an individual's application are then considered proxies for the "unobservable characteristics" that are intelligence, diligence, and greater motivation that lead to a more productive employee.⁷⁶ Because some employers perceive black and Latino candidates to be more likely than others to have been convicted of a crime, and thus have a criminal record, employers will make decisions precisely on this, and determine these candidates less likely to be job-ready during the hiring process.⁷⁷ Ultimately, critics of ban-the-box legislation point to the unintended consequences, which result in the hiring discrimination against black and Latino men who do not have criminal records.

In one ban-the-box field experiment, a total of 15,000 fake job applications were submitted online to employers before and after "ban-the-box" laws went into effect in both New Jersey and New York City, randomly assigning race and criminal history to each applicant.⁷⁸ Based on the number of callbacks received for each application, researchers found that when employers asked about criminal records on the application, they called white applicants just slightly more often than identical black applicants – but that small gap became more than four times larger, and statistically significant, after "ban-the-box" went into effect. Because of race, "white applicants with criminal records benefited the most from the policy change – they're the ones who got a chance to prove themselves in an interview, though it's unclear if they would have gotten a job offer."⁷⁹

Moreover, there is some evidence to these policies' net effects, negatively

impact employment for young, low-skilled men, without college degrees, whom are often also black and Latino. Therefore, if employers continue to make decisions based on whether the applicant has a criminal conviction, ban-the-box laws requiring the delay of criminal history inquiries, only costs the employer time and the resources spent on conducting initial interviews, or conducting blanket background checks on every single applicant.⁸⁰

While there is considerable bipartisan support for ban-the-box legislation, there is also a considerable divide regarding the merits of such policies. Many federal legislators and state governments are hesitant to employ ban-the-box policies, for fear of seeming "soft" on crime.

V. From an Inmate's Perspective

Hiring Discrimination Experience Faced by Incarcerated Latino Males

Nevertheless, a certainty remains – once locked-up, ex-offenders are forever locked out of society in one form or another. For Latinos, this reality further exacerbates the disparities with which they cope with daily.

In December 2016, I conducted questionnaire interviews of a small sample of currently incarcerated Latino males in Chuckawalla Valley State Prison, in California. Men ages 24 to 39 expressed the same frustration that employers and legislators feel about ban-the-box policies.⁸¹ Ex-offenders struggle with being forthcoming with regard to their past criminal histories, and facing discrimination whether or not they disclose such information to begin with. Among the group of 7 males, many filed ten to twenty applications and were always denied a callback.⁸² Meanwhile others, weary over their prospects upon reentry and the strong pull from addiction, mental issues, or lacking support systems, preferred not to disclose their convictions, and accepted a low-wage service job until the criminal background check sure to terminate their employment, returned.⁸³ Inmate J.A. explains that the "sole act of filling out a job application is intimi-

"It's not only about how inmates get sentenced unfairly but also how the court system and trials...play out. But in my case it doesn't mean anything anymore because I will be going home in a couple of years and now I will have a felony on my record. No employer is going to care whether I did it or not, all that matters is what's on record."

- Renteria, Chuckawalla Valley State Prison, California

dating, because of my past, my record, and having never had a stable job."⁸⁴ After landing one of the rare interviews, comes the question of sporadic and short-term job history, to which he shies away from as best as he could. Why was keeping a job so difficult? The answer was a variety of struggles, both personal and societal, with one of them including having been fired due to returned criminal background checks. At times J.A. was even told "the company has a policy not to hire persons with a [criminal] record."⁸⁵ Unsurprised by the responses, most ex-offenders simply continue their job search. They have "never [raised] complain[ts] against any employer about their past criminal history," because either they did not know they had any right to file a discrimination claim, or because they "felt it would get [them] the same answer," a denial of the job.⁸⁶

Ex-offenders are stuck between a rock and a hard place, not only while in prison, but even more so after release. Most shared that they looked for employment anywhere from three to six months, until they were given a chance at a job.⁸⁷ But for others, the reality is that they are often back in jail within the year – inmates reported having been in and out of jail anywhere from four to twenty times, from county jail terms to longer prison terms.⁸⁸ They are rearrested for violation of parole, possession of substances, robbery, forgery, receipt of stolen property, and a laundry list of mostly low-level offenses, and non-violent misdemeanor crimes compounded by gang enhancements. C. Edwards underscores the added stressors of being successful upon reentry; "not only is it a challenge to obtain employment, it is also difficult to obtain affordable housing, [and] transportation subsidies"⁸⁹ which are necessary and sometimes impede complying with required meetings with

parole officers, and the many court mandated classes depending on the conviction.

These inmates struggle with recognizing the elements of their environment that pushed them to a life of crime, the broken households and relationships they leave behind, but also the lacking comprehensive legal assistance that an already overwhelmed public defender system cannot provide. Consequently, those convicted while innocent are nevertheless branded forever. As inmate J.G. Renteria puts it, "it's not only about how inmates get sentenced unfairly but also how the court system and trials...play out. But in my case it doesn't mean anything anymore because I will be going home in a couple of years and now I will have a felony on my record. No employer is going to care whether I did it or not, all that matters is what's on record."⁹⁰

There is a lot of hurt among inmates who feel betrayed by a system that policed their community heavier, and still deep recognition for their individual mistakes. Through their experiences, many admit that some inmates should not be allowed certain sensitive jobs outside, acknowledging that there is much more rehabilitation others need.⁹¹ Still, in prison they prepare themselves for the stigma that freedom will bring them, from familial relationships, to institutional barriers that will deprive them of financial aid necessary for educational opportunities, to affordable housing options. Inmate J.G. Renteria is certain that doors will be shut for him when he is released: "Out there I was a manager for a big corporation and was able to pick and choose which application I wanted interviewed. And there have been times when incarceration priors have influenced me not interview people even though they had good qualifica-

tions."⁹² All of the inmates stated they never complained of being discriminated against because of their record, some never knew that was an option.⁹³ While one inmate was asked to explain his prior conviction during his interview, most were not.⁹⁴ This is why uniform standards, from banning the box at the application stage, or policies and practices that allow ex-offenders the opportunity to make their case, can make the difference for ex-offenders who are trying to get back on their feet. Not surprisingly, all admitted to the most important aspect of being released, aside from reuniting with their families and making amends, finding a job was always a top priority.⁹⁵

What happens when recently released ex-offenders realize they are left without any job opportunities? A. Martinez explains, that "depression and anxiety would set in for me. And drugs with alcohol were my coping mechanism, and those both require money which led to crime. Stealing, and rob[bing] were my downfall to support what then turned into addiction habits."⁹⁶ Inmate M.A. Vasquez confirms that getting a job means a lot, "not only would it boost [his] confidence level," but also give him back a sense of pride, knowing he is able to provide for his family without resorting to a life of crime.⁹⁷ In prison most inmates reported they have participated in Narcotics Anonymous, Alcoholics Anonymous, Criminal Thinking courses, Houses of Healing programs, and Victims Awareness classes among others. Still, even those who have taken steps to complete a GED by the time they are released, are nevertheless handicapped by the realities of employer bias, and the societal stigma of having been an ex-offender. Each release is a wager, and a job is key factor in helping determine how long they get to remain "outside."

Policy Recommendations

State Action

State regulations must standardize ex-offender protections by incorporating reasonable but uniform employer policies and practices. These include removing inquiries of a conviction record from job applications, and providing a list of statewide jobs that may require a background check. Where background checks are necessary, considering only convictions with a direct relationship to job duties and responsibilities is a middle-of-the-road, common sense approach, as well as the length of time since the offense. Additionally NELP's recommendation of remove self-reporting/voluntary questions about conviction history is imperative.⁹⁸ In effect, disclosure of such information may not appear voluntary to an individual desperately seeking employment. Ultimately, state wide policies of public and private employers should hold off on criminal record inquiries until a conditional job offer is made, and the applicant should be provided an opportunity to explain their offense, as well as establish rehabilitation or disclosing any mitigating circumstances.⁹⁹

Federal Action

This approach should also be mirrored at the federal level. Congress should garner enough bi-partisan support to pass the Fair Chance Act of 2017, to reflect the changes in policies in over 150 jurisdictions across the states. The Fair Chance Act would prohibit all branches of the federal government and federal contractors from asking a job applicant about their criminal history until a conditional offer of employment has been made. This would send a clear message of zero tolerance for hiring discrimination against ex-offenders. Importantly, an amendment to this proposed bill should require the expansion of these provisions to private employers. Only then will a standardized approach ensure that ex-offenders are equally protected nationwide.

As a preventative measure to the growing incarceration in the United States, of disproportionately African

American and Latino communities, legislators should urge Congress to pass the REDEEM Act, which would allow for near-universal eligibility for expungement, except for individuals who commit most serious offenses. This offers numerous low-level offenders a chance at redemption and successful reentry, and benefit more fully from Fair Chance Act policies.

Perhaps the most uniform method of ensuring legal protections against discriminatory hiring practices for ex-offenders would be to amend Title VII of the Civil Rights Act of 1964, like it did in 1991. Codifying ban-the-box policies that would ensure that ex-offender's civil rights are respected nationally and uniformly, providing individuals with a clear avenue for redress, and a clear message to employers, both public and private. However, this is highly unlikely, although there are arguments to be made; an ex-offender is not an in-born characteristic. In an ideal world, an act of this magnitude has the potential to remedy the struggles faced mostly African American and Latino communities. For now, state and federal mandates allowing ex-offender applicants the opportunity to make their case before an employer, would greatly enhance their chances of securing stable employment, their by reducing their risk of recidivism.

Conclusion

Latinos are the second highest affected minority group in the criminal justice system, but are often left out of the conversation of what happens to them after reentry. Now is an opportune time for criminal justice reforms, for legislators and policy makers, to act. While many remain in prison due to unfair sentencing guidelines, each week 10,000 ex-offenders are released from state and federal prison, and who need policies and programs that ensure their successful reentry – and this should begin with jobs. "Some of the greatest, talented, and skilled workers are in here, [and this was] our time to change as well, and many here *have*."¹⁰⁰ For the inmates in Chuckawalla Valley State Prison, to the rest of

currently and formerly incarcerated population in the United States, opportunities should be created to give them the chance to prove employer biases wrong.

Endnotes

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