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RACIAL PROFILING IN HIRING: A CRITIQUE OF NEW "BAN THE BOX" STUDIES

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Two recent studies claim that "ban the box" policies enacted around the country detrimentally affect the employment of young men of color who do not have a conviction record. One of the authors has boldly argued that the policy should be abandoned outright because it "does more harm than good." It's the wrong conclusion. The nation cannot afford to turn back the clock on a decade of reform that has created significant job opportunities for people with records. These studies require exacting scrutiny to ensure that they are not irresponsibly seized upon at a critical time when the nation is being challenged to confront its painful legacy of structural discrimination and criminalization of people of color.

Our review of the studies leads us to these top-line conclusions: (1) The core problem raised by the studies is not ban-the-box but entrenched racism in the hiring process, which manifests as racial profiling of African Americans as "criminals." (2) Ban-the-box is working, both by increasing employment opportunities for people with records and by changing employer attitudes toward hiring people with records. (3) When closely scrutinized, the new studies do not support the conclusion that ban-the-box policies are responsible for the depressed hiring of African Americans. (4) The studies highlight the need for a more robust policy response to both boost job opportunities for people with records and tackle race discrimination in the hiring process—not a repeal of ban-the-box laws.

INTRODUCTION

Nearly one in three U.S. adults has an arrest or conviction record that can show up on a routine employment background check. Even very old or less serious offenses undermine the job prospects of millions of Americans. Decades of excessive policing

and over-criminalization have had a devastating impact on people of color, leaving them struggling to find gainful employment because of the stigma of a record.

"Ban the box"—the policy reform typically associated with delaying background check inquiries—was not intended as the silver bullet to a racially biased criminal justice system. The rallying cry of ban-the-box raised consciousness; it elevated the plight of millions of people struggling to gain a foothold because of a past record. With this opening for reform, the movement, which has been spread across the nation, has sought to advance not only ban-the-box but comprehensive fair-chance employment policies.

Fair-chance laws include banning the box on employment applications as well as the standards adopted by the U.S. Equal Employment Opportunity Commission (EEOC) to protect against racial discrimination in violation of Title VII of the Civil Rights Act of 1964.¹ The EEOC guidance on the use of arrest and conviction records prohibits blanket bans against hiring anyone with a record, and if a record is considered, the employer must assess the age of the offense, its job-relatedness, and any evidence of rehabilitation and mitigation.

In recent months, two studies evaluating the impact of ban-the-box policies have been released—both making the controversial claim that the policies have a detrimental impact on young African-American men. One of the researchers concludes that the policy should be abandoned because it "does more harm than good."² The two studies at issue were authored by Amanda Agan and Sonja Starr ("Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment")³ and Jennifer Doleac and Benjamin Hansen ("Does Ban the Box Help or Hurt Low-Skilled Workers? Statistical Discrimination and Employment Outcomes When Criminal Records Are Hidden").⁴ A third recently released study by Daniel Shoag and Stan Veuger ("No Woman, No Crime: Ban the Box, Employment, and Upskilling")⁵ presents a range of findings on the impact of ban-the-box policies in geographic areas with high crime rates.

As the nation struggles to confront its legacy of structural racism and criminalization of people of color, these studies warrant close consideration to ensure that they are not wrongly used to undermine a decade of progressive reforms that have opened job opportunities for people of all races with arrest and conviction records. Applying the economic theory of "statistical discrimination," which in this case documents employers' racial stereotyping of African Americans as "criminals," the studies focus their criticism on the ban-the-box policy—not the racism that the policy exposes.

What follows is a more detailed treatment of these issues, which we hope sheds light on the limitations of the new studies and helps inform the research and policy agendas designed to promote employment opportunities for people with records and eventually dismantle discrimination in the hiring process.



DOWNLOAD ([HTTPS://S27147.PCDN.CO/WP-](https://s27147.pcdn.co/wp-content/uploads/policy-brief-racial-profiling-in-hiring-critique-new-ban-the-box-studies.pdf)



**CONTENT/UPLOADS/POLICY-BRIEF-RACIAL-PROFILING-IN-HIRING-
CRITIQUE-NEW-BAN-THE-BOX-STUDIES.PDF)**

ENDNOTES

1. EEOC Enforcement Guidance No. 915.002 (Apr. 25, 2012), http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf (http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf).
2. Jennifer L. Doleac, Opinion, *"Ban the box" Does More Harm Than Good*, Brookings, May 31, 2016, <http://www.brookings.edu/research/opinions/2016/05/31-ban-the-box-does-more-harm-than-good-doleac> (<http://www.brookings.edu/research/opinions/2016/05/31-ban-the-box-does-more-harm-than-good-doleac>).
3. Amanda Agan & Sonja Starr, *Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment*, Univ. of Mich. Law & Econ. Research Paper No. 16-012 (June 14, 2016), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795795 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795795).
4. Jennifer Doleac & Benjamin Hansen, *Does Ban the Box Help or Hurt Low-Skilled Workers? Statistical Discrimination and Employment Outcomes When Criminal Records Are Hidden* (July 2016), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2812811 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2812811).
5. Daniel Shoag & Stan Veuger, *No Woman, No Crime: Ban the Box, Employment, and Upskilling*, AEI Econ. Working Paper 2016-08 (May 25, 2016), <https://www.aei.org/publication/no-woman-no-crime-ban-the-box-employment-and-upskilling/> (<https://www.aei.org/publication/no-woman-no-crime-ban-the-box-employment-and-upskilling/>).

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