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SERVICES**
INCORPORATED

299 Broadway
New York, NY 10007
Phone 212-417-3700
Fax 212-417-3891
www.mfy.org

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Interim Executive Director

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Ramonita Cordero
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Supervising Attorneys

By E-mail: Commissionmeetingcomments@eeoc.gov

July 26, 2011

Chair Berrien
Commissioners Ishimaru, Barker, Feldblum and Lipnic
U.S. Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, DC 20507

Re: EEOC Enforcement of Title VII Protections Regulating Criminal
Background Checks

Dear Chair Berrien and Commissioners Ishimaru, Barker, Feldblum, and Lipnic:

Please accept our comments on the EEOC's July 26, 2011 public meeting to examine arrest and conviction records as a hiring barrier. The EEOC's public meeting provides a timely and important opportunity to evaluate the new realities of criminal background checks for employment. We urge the EEOC to update and clarify its guidance and enforcement strategies regulating criminal background checks, balancing the civil rights of workers of color and the legitimate concerns of employers to protect safety and security on the job.

Our organization, MFY Legal Services, Inc. (MFY), is dedicated to equal access to justice for all, and assists low-income New Yorkers resolve legal problems in the areas of employment, housing, foreclosure, public benefits, disability rights, elder issues, mental health, consumer, and family matters. We work with clients who have criminal records and face legal barriers in obtaining employment and occupational licenses, providing direct legal services in the form of advice, counsel and representation. We respond daily to the many problems associated with criminal records that now follow workers from job to job for the rest of their adult working lives. We also have witnessed discrimination faced by those with a criminal record when they are denied jobs based on a criminal background check, without regard to the seriousness of the crime or the relationship of the offense to the job.

Examples of our clients' experiences include:

- A 34-year old Latino woman who had been successfully working as an administrative assistant for a non-profit organization for 10 years was terminated from her job after a city agency conducted a criminal background check and denied her clearance to continue to work as an administrative assistant because of a single 13-year old felony conviction when she was a young adult.

- A 43-year old African American woman who had previously worked as a bus attendant for a private company was denied a clearance to work as a bus attendant by a city agency after conducting a criminal background check that revealed her 16-year old felony conviction.
- A 30-year old Latino woman who had been working for four months as an administrative assistant for another non-profit organization that was a subcontractor of a city agency was terminated from her job after the agency conducted a criminal background check and denied her clearance to continue to work because of her 13-year old felony conviction when she was a teenager, despite her clear record of rehabilitation and her prior work experience as a paralegal at two major law firms.

These clients have successfully reintegrated into society and have responsibly held jobs to support themselves and their families. But despite their efforts, they are haunted by their past criminal convictions and struggle with employment discrimination in the workplace, resulting in job termination because the city agencies that conducted the criminal background checks denied their clearance to be able to continue to work in their respective jobs.

Criminal record barriers to employment are very real and cost our clients jobs for which they are well qualified. In our experience, arrest and conviction records are more and more easily available, and employers almost universally now require background checks in the employment process. The result is that our clients are denied work because of histories they cannot change, and with it the opportunity to provide for themselves and their families. This not only has a devastating personal effect but also a social cost.

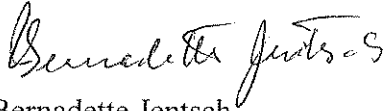
The National Employment Law Project (NELP) recently released a report (*65 Million "Need Not Apply: The Case for Reforming Criminal Background Checks for Employment*) documenting the major barriers to employment faced by the 65 million (or nearly one in four) U.S. adults with a criminal record and the widespread use of blanket employer restrictions denying employment to people with a criminal record. In addition, the report describes the severe impact of criminal background checks on communities of color. For example, in 2009, the number of arrests as a percentage of the population was just over three percent for whites compared to 7.6 percent for African Americans. African Americans are also about four times more likely than Caucasians to have a felony conviction.

The obstacles to employment posed by criminal record background checks take on special significance in light of the severe economic downturn and the shrinking employment opportunities of people of color. According to a recent U.S. Department of Labor report, *The Black Labor Force in Recovery*, “[t]he average unemployment rate for blacks in 2010 was 16.0 percent, compared to 8.7 percent for whites, and 12.5 percent for Hispanics.” Thus, as our nation’s workers continue to struggle to find jobs, criminal background checks compound the

historic employment challenges of the African American and Latino communities.

We urge the EEOC to update the guidelines that apply to the use of arrest and conviction information, aggressively enforce the law and expand its education and outreach to the employer and worker communities. Thank you for your attention to this issue of critical importance to millions of Americans struggling to find work in today's economy.

Very truly yours,

A handwritten signature in cursive script that reads "Bernadette Jentsch".

Bernadette Jentsch
Senior Staff Attorney