

# 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

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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.

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**These studies merely reinforce the need for stronger anti-discrimination law enforcement and further policy reforms to help eradicate the underlying discrimination.**

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“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.<sup>1</sup> 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.

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## Rather than identifying the root of the problem, the argument blames the reform.

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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.”<sup>2</sup> The two studies at issue were authored by Amanda Agan and Sonja Starr (“Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment”)<sup>3</sup> 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”).<sup>4</sup> A third recently released study by Daniel Shoag and Stan Veuger (“No Woman, No Crime: Ban the Box, Employment, and Upskilling”)<sup>5</sup> 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.

## Primary Concerns with New Ban-the-Box Studies

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Our critique of the new economic studies of ban-the-box laws tracks four key themes:

- The core problem exposed by the studies is entrenched racism in the hiring process, which is expressed in the form of racial profiling of African Americans as “criminals.”
- Ban-the-box is working, both by increasing employment opportunities for people with records and by changing employer attitudes toward hiring people with records.

- When closely scrutinized, the new studies do not support the conclusion that ban-the-box policies are responsible for depressed hiring of African Americans.
  - A comprehensive policy response is necessary to fundamentally increase job opportunities for people with records and reduce race discrimination in hiring.
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**“Where, in the absence of a criminal background check an employer chooses to use race as a proxy for criminal history, *that employer is patently violating federal civil rights law.*”**

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### **1. The core problem exposed by the studies is entrenched racism in the hiring process, which is expressed in the form of racial profiling of African Americans as “criminals.”**

Although we have serious questions about the conclusions drawn from the ban-the-box studies, which we will expand upon below (Point 3), our primary concern is with the underlying framework of the argument that African Americans are negatively impacted by the policy.

The premise of the argument is that employers who profile young African-American men as “criminals” should have access to the conviction history information of applicants to dispel the racial stereotype. Rather than identifying the root of the problem—which is both coupling criminality with being African American and the dehumanizing of individuals with records—the argument blames the reform. This distinctly economic framework, which views employers as entirely rational actors, fails to appreciate the extent to which negative racial stereotypes continue to plague the hiring process.

Even accepting the questionable conclusions of the Agan/Starr and Doleac/Hansen studies at face value, they merely reinforce the need for stronger anti-discrimination law enforcement and further policy reforms to help eradicate the underlying discrimination, not a rejection of ban-the-box protections. In 2012, the EEOC took a significant step to address race discrimination in hiring by updating its guidance on the use of arrest and conviction records. As the EEOC guidance makes clear, using race as a proxy for criminal history is indisputably race discrimination and unlawful under Title VII of the Civil Rights Act of 1964.

Indeed, EEOC Commissioner Victoria Lipnic (a Republican appointee) emphasized the following point in her testimony before the U.S. Commission on Civil Rights: “Where, in fact, in the absence of a criminal background check an employer chooses to use race as a proxy for criminal history, *that employer is patently violating federal civil rights law.* Were such a charge brought to the Commission and found to be true, I would have no difficulty bringing the full force of the agency to bear on such a transgressor.”<sup>6</sup>

The Doleac/Hansen study fails to even acknowledge the EEOC guidance and the increase in enforcement activity, which includes recent high-profile lawsuits holding major employers liable for civil rights and consumer law violations based on their misuse of criminal history information.<sup>7</sup> Furthermore, according to periodic employer surveys conducted by a background check firm, the “EEOC’s guidance continues to have a growing impact on

employers' hiring practices.”<sup>8</sup> Not surprisingly, the more time a new enforcement policy is given to take hold, the greater the impact it has on employer behavior.

Addressing the criminalization of people of color and the dehumanization of criminal-justice-involved people will also require additional efforts beyond robust enforcement of civil rights laws. To effect cultural change and catalyze behavioral shifts by employers, ban-the-box is a helpful starting point because it raises consciousness around the issue. But fully dismantling race discrimination also requires a serious commitment at all levels of society—including by employers—to eliminate “implicit bias” and embrace the key components of “debiasing.”<sup>9</sup>

As documented by the Kirwan Institute for the Study of Race and Ethnicity and other leaders in the field,<sup>10</sup> the harmful effects of implicit bias can be changed through an education regime and strong accountability measures, which are especially relevant to hiring managers and other human resources professionals who interact with applicants of color. A growing number of employers, including Facebook,<sup>11</sup> have also taken significant steps to address these issues, recognizing that diversity, equity, and inclusion policies have proven to significantly benefit the employer's bottom line.<sup>12</sup>

## **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.**

For those advocating to increase employment opportunities for people with records, the fundamental challenge is to humanize their plight and find common ground to support genuine policy change. The broad appeal of ban-the-box policies among community, political, and business leaders across the political spectrum has contributed to the favorable policy environment that has produced a broad agenda of policy reforms not limited to ban-the-box.<sup>13</sup>

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### **A recent analysis found that the District of Columbia hired 33 percent more people with records after the 2014 ban-the-box law took effect.**

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While the Agan/Starr study focuses on the impact of ban-the-box on select groups of workers (mostly young African-American men without records) seeking a *callback* in response to an application, the evidence is growing that ban-the-box is having an overall favorable impact on actual hiring practices. For example, a recent analysis of the District of Columbia found that the city hired 33 percent more people with records after the 2014 ban-the-box law took effect.<sup>14</sup> A study of Durham, North Carolina's policy documented that hiring of people with records increased seven-fold within four years after the law took effect.<sup>15</sup> As a result of its ban-the-box policy, 10 percent of Atlanta's new public hires between March and October 2013 had records.<sup>16</sup> Growing evidence thus suggests that banning the box helps people with records get jobs—progress that should be built upon, not undermined.<sup>17</sup>

### **3. When closely scrutinized, the new studies do not support the conclusion that ban-the-box policies are responsible for depressed hiring of African Americans.**

The key question raised by the new studies is *not* whether ban-the-box has helped increase employment of people with records. Nor is the question whether racial profiling in the form of “statistical discrimination” exists and plays a part in denying employment opportunities to African-American men and other people of color. Those questions have both been previously answered in the affirmative.<sup>18</sup>

The narrower question here is whether ban-the-box policies are responsible for increasing discrimination against African-American men without a record. When scrutinized more closely, the studies document that ban-the-box policies *benefit* most African Americans. Indeed, all three studies found that people of color were called back for interviews or employed at higher rates after a ban-the-box policy took effect.

**a. The Doleac/Hansen Study:** This study examines the employment effects of ban-the-box policies implemented nationwide, while providing breakdowns by race, age, and gender.

Although the study includes many distinct demographic breakdowns, the statistically significant findings are fairly limited. The study observes a negative effect on the employment of African-American men, ages 25 to 34, with no college degree. However, that finding should not be considered in isolation and must be weighed against the statistically significant findings that ban-the-box increased employment for both (1) African-American men, ages 35 to 64, with no college degree, and (2) African-American women, ages 25 to 34, with a college degree, who together make up a larger share of the population of African Americans.<sup>19</sup>

In addition to these findings, we caution that the study failed to differentiate between ban-the-box policies that apply only to public sector employers—the vast majority of all state and local laws—and those laws that apply to private sector employers as well. We question whether public sector laws impact private sector employers as much as the authors conclude, given that these laws apply to such a narrow segment of employers (state and local governments employ 12.7 percent of the nation’s workforce). And other factors could be influencing outcomes alongside the ban-the-box policies in the states and cities that more directly account for the authors’ findings.<sup>20</sup>

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**b. The Agan/Starr Study:** This study utilizes data generated by fictitious online job applications submitted to determine employer callback rates for young, low-skilled African-American and white men (ages 21-22) who applied for entry-level jobs shortly before and after the New York City and New Jersey private sector ban-the-box laws took effect in 2015.<sup>21</sup>

Although the study found a widening gap between the callback rates for young white and African-American men in New Jersey, the increase was not the result of fewer callbacks for young African-American men. Instead, the widening gap in New Jersey was largely the result of a significant benefit of the ban-the-box law to white applicants with a record.<sup>22</sup> In contrast, in New York City, the study did *not* find a statistically significant difference between the callback rates of whites versus African-American applicants,<sup>23</sup> which could well be attributed to the fact that a 1977 New York law specifically protects against discrimination in hiring based on a criminal record.<sup>24</sup> Between the two locations, *both* races received callbacks at higher rates *after* the law took effect.<sup>25</sup> We also caution that the study's findings were narrowly limited to young African-American men, ages 21-22, who are among the most challenging of all demographic subgroups to employ.<sup>26</sup>

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## Ban-the-box reforms were never intended as a panacea for the severe employment barriers facing people with records.

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**c. The Shoag/Veuger Study:** This study examines the employment effects of ban-the-box policies in cities across the country, while focusing on the impact in areas with high crime rates.<sup>27</sup>

Most notably, the Shoag/Veuger study found that ban-the-box laws *increased* employment of people living in areas with high crime rates by a statistically significant rate of 4 percent. Moreover, Shoag/Veuger found “significantly increased employment for African-American men” after the ban-the-box laws took effect—not lower rates of employment, as emphasized by Doleac and Hansen.<sup>28</sup> In contrast to the Doleac/Hansen study, Shoag and Veuger found that women had lower rates of employment (in areas of high crime) after the laws took effect. However, as characterized by the authors, these results are “suggestive, not conclusive.”<sup>29</sup>

### **4. A comprehensive policy response is necessary to fundamentally increase job opportunities for people with records and reduce race discrimination in hiring.**

Ban-the-box reforms were never intended as a panacea for the severe employment barriers facing people with records, and certainly not for the entrenched employment challenges of young men of color locked out of the job market.

Removing criminal history inquiries from job applications is only one part of a comprehensive fair-chance strategy,<sup>30</sup> which also includes the full range of protections set forth in the 2012 EEOC guidance, as described above.<sup>31</sup> “Clean slate” reforms, such as expungement and record-sealing laws, can also complement the benefits of fair-chance policies by helping to remove the stigma of a record for people with old and minor records.

In his critique of the new studies, Professor Noah Zatz of UCLA Law School makes the compelling point that “the first best solution would be to suppress *both* forms of discrimination. We should ban the box *and* vigorously prevent employers from racially profiling.”<sup>32</sup> Thus, a key strategy must include an aggressive regime that expands and

enforces the nation's anti-discrimination laws. If employer behavior is influenced by costs, they will be motivated to comply with the EEOC guidelines and federal consumer laws regulating background checks in order to avoid major judgments of the sort that have increasingly been awarded in criminal records litigation. Indeed, the 2012 EEOC guidance is having a measurable impact on employer hiring practices, and studies show that targeted Title VII enforcement measures can result in lower rates of discrimination and higher rates of compliance with the law.<sup>33</sup>

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**Now is the time for a robust reform agenda that creates jobs for people with records and dismantles racism in the hiring process, not rolling back the clock on ban-the-box.**

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In addition to the range of complementary strategies described above, we believe that the unprecedented fallout from decades of mass incarceration and the enduring legacy of race discrimination in hiring justify a new federal commitment to “full employment” and other job creation strategies that will significantly benefit communities of color (such as “targeted hiring” requirements that apply to employers that contract with the federal government to provide goods and services). As documented by economist Valerie Wilson of the Economic Policy Institute, full-employment policies have an especially significant impact on young African-American men—the same population that has the hardest time breaking into the labor market.<sup>34</sup>

Certainly, the answer to these entrenched problems is *not* to repeal ban-the-box laws and *not* to make *more* background check information available to employers at the start of the hiring process, as recommended by Doleac and Hansen. Indeed, premising policies on the notion that more criminal history information is always better not only penalizes the large number of people who benefit from ban-the-box and other policies that seek to remove the stigma of a criminal record, but also fails to appreciate the lived experience of people with records (who are discouraged from applying for jobs when applications include a record inquiry) and the pervasive influence of the commercial background check industry.

## **Conclusion**

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The studies reviewed here misplace their criticism onto ban-the-box—instead of rightly laying blame on the underlying racism that the policy exposes—and they do so at a defining moment when the nation is being forced to face its painful legacy of structural racism and criminalization of communities of color. Serious and objective research evaluating ban-the-box and other policies that seek to improve job opportunities for people with records and communities of color are critically necessary to inform and advance meaningful policy reforms. For the reasons described above, however, the new ban-the-box studies warrant much more careful scrutiny before their findings should be given weight; policymakers would be well advised to take serious pause before contemplating any reversal of a decade's worth of reforms that have proven to make a positive, real-world difference for jobseekers with records. Now is the time to rally around a robust reform agenda that creates jobs for people with records and dismantles racism in the hiring process, not roll back the clock on ban-the-box.

## Endnotes

- <sup>1</sup> 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).
- <sup>2</sup> 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>.
- <sup>3</sup> 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).
- <sup>4</sup> 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).
- <sup>5</sup> 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/>.
- <sup>6</sup> Victoria A. Lipnic, Commissioner, EEOC, Statement at Hearing before the U.S. Comm’n on Civil Rights (December 7, 2012) at 43-47, <http://www.eeoc.gov/eeoc/legislative/upload/appendices.pdf> (emphasis in original).
- <sup>7</sup> See, e.g., Tanzina Vega, *Census Settles Hiring Lawsuit Over Criminal Records*, CNNMoney (Apr. 19, 2016), <http://money.cnn.com/2016/04/19/news/economy/census-bureau-hiring-lawsuit-settlement/>; Alexia Elejalde-Ruiz, *\$13M Penalty for Background Check Errors that Cost Jobs, Hurt Reputations*, Chi. Trib. (Oct. 29, 2015), <http://www.chicagotribune.com/business/ct-background-check-penalties-1030-biz-20151029-story.html>.
- <sup>8</sup> From late 2013 to early 2014, the background check company EmployeeScreenIQ surveyed almost 600 employer representatives regarding the use of employment background checks. See EmployeeScreenIQ, *The Unvarnished Truth: 2014 Top Trends in Employment Background Checks* at 3 (2014). Only 12 percent of employers indicated that they had not adopted the guidance. *Id.* at 13. In contrast, when responding to a similar survey when the guidance was first issued one year earlier, 32 percent of employers indicated compliance with the guidance. *Id.* In response to its 2015 survey, EmployeeScreenIQ reported that, 72 percent of employers asserted that they perform “individualized assessments” of candidates with criminal records as recommended by the EEOC guidance —up from 64 percent of respondents in 2014. See EmployeeScreenIQ, *Employment Screening 2015: Background Screening Trends & Practices* at 14 (2015).
- <sup>9</sup> Michelle Natividad Rodriguez, “Fair-Chance Hiring: An Antidote to Race-Coding and Inequality” (June 16, 2015), <http://www.nelp.org/blog/fair-chance-hiring-an-antidote-to-race-coding-and-inequality/>.
- <sup>10</sup> Cheryl Staats et al., Kirwan Inst. for the Study of Race & Ethnicity, *State of the Science: Implicit Bias Review* (2016 ed.), <http://kirwaninstitute.osu.edu/wp-content/uploads/2016/07/implicit-bias-2016.pdf>. For more information, consult the resources provided by the Perception Institute’s resources at <http://perception.org/reality/workplace/>.
- <sup>11</sup> For more information on the company’s practices, visit Facebook, *Managing Unconscious Bias*, <https://managingbias.fb.com/>.
- <sup>12</sup> Vivian Hunt et al., McKinsey & Co., *Diversity Matters* at 2 (Nov. 24, 2014), <https://web.duke.edu/equity/toolkit/documents/DiversityMatters.pdf>.
- <sup>13</sup> Most recently, Governor John Bel Edwards signed ban-the-box legislation, making Louisiana the 24<sup>th</sup> state to adopt the policy. See Michelle Natividad Rodriguez & Beth Avery, NELP, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies* (June 1, 2016), <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>.
- <sup>14</sup> Office of the D.C. Auditor, *The Impact of “Ban the Box” in the District of Columbia* at 16 (June 10, 2016), [http://www.dcauditor.org/sites/default/files/FCRSA%20-%20Ban%20the%20Box%20Report\\_0.pdf](http://www.dcauditor.org/sites/default/files/FCRSA%20-%20Ban%20the%20Box%20Report_0.pdf).
- <sup>15</sup> Southern Coal. for Soc. Justice, *The Benefits of Ban the Box: A Case Study of Durham, NC* (2014), [http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox\\_WhitePaper-2.pdf](http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf).
- <sup>16</sup> Materials on file with NELP.
- <sup>17</sup> Anastasia Christman & Michelle Natividad Rodriguez, NELP, *Research Supports Fair-Chance Policies* (June 2016), <http://www.nelp.org/publication/research-supports-fair-chance-policies/>.
- <sup>18</sup> *Id.*; Devah Pager, *The Mark of a Criminal Record*, 108 Am. J. Soc. 937 (2003), [http://scholar.harvard.edu/files/pager/files/pager\\_ajs.pdf](http://scholar.harvard.edu/files/pager/files/pager_ajs.pdf).
- <sup>19</sup> For black men without a college degree between the ages of 25 and 34, Doleac and Hansen found a statistically significant 3.42 percentage point decrease in the probability of employment. For Latino men, ages 25 to 34, without a college degree, the researchers found a 2.34 percentage point decrease, but that finding was not statistically significant pursuant to typical academic standards. Notably, Doleac and Hansen also observed a statistically significant 2.80 percentage point increase in the probability of employment for black men, ages 35 to 64. They also documented a statistically significant 3.15 percentage point increase in the probability of employment for black women ages 25 to 34 (other age-groups of women were not studied).
- <sup>20</sup> Other factors could be contributing to the finding that young African-American men had lower employment rates. For example, it is not clear that the study fully captures the impact of the Great Recession, which was most severe during the years studied by Doleac and Hansen.
- <sup>21</sup> The sample size of the Agan/Starr study has raised some cause for concern. Although applications were submitted to 4,292 stores, there is significant double counting because the stores where the individuals applied represented only 296 chains. Many of these chains may centralize application review, thus that process would not differ from establishment to establishment within the same firm. Moreover, of the 296 chains, only 36 percent included the criminal history question on their application before the law went into effect. That leaves only around 100 firms available for a true pre- and post-test of the policy. And of those approximately 100 firms, only 75 percent were successfully matched (i.e., applications were submitted both before and after the policy took effect), leaving only about 80 firms that were fully studied.

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<sup>22</sup> In fact, the combined callback rate for all white applicants in New Jersey—including those with a record—was higher after ban-the-box took effect (20.1 percent) than the pre-ban-the-box callback rate for even those white applicants without a record. See Agan & Starr, *supra* note 2, at 58 fig.A3.2.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> N.Y. Correct. Law § 752.

<sup>25</sup> Agan & Starr, *supra* note 2, at 26, 44 fig.2.

<sup>26</sup> It is also worth noting that while audit studies are fairly common, they may present certain limitations when attempting to isolate the effect of race. The names used vary in how commonly they are associated with people of the intended race; many of the “black names” are correlated with black people only 70 to 80 percent of the time. The applications did not otherwise indicate race. See Agan & Starr, *supra* note 2, at 12-13 & 56. In addition, “some critics [of such correspondence tests] have argued that the more distinctive African-American names are also associated with lower socioeconomic status, thus confounding the effects of race and class. Indeed mother’s education is a significant (negative) predictor of a child having a distinctively African-American name. Devah Pager & Bruce Western, *Identifying Discrimination at Work: The Use of Field Experiments*, 68 J. Soc. Issues 221, 224 (2012), <http://scholar.harvard.edu/pager/publications/identifying-discrimination-work-use-field-experiments>.

<sup>27</sup> Like the Doleac/Hansen study, Shoag and Veuger do not differentiate between ban-the-box policies that apply only to public sector employers and those laws that also apply to private sector employers, which raises concerns as described above. The authors explain the rationale for their approach as follows: “Although these policies vary in their restrictiveness and in how comprehensively they apply to employers and producers, for the purpose of our analysis we do not draw such distinctions, partially to avoid arbitrary assignments of treatment regimes, and partially because we believe that sector-specific or public-sector-only measures may well have spillover effects on other sectors. Such spillovers can arise from a variety of origins. For example, sector-specific Ban the Box measures may create a new social norm that guides employers throughout the economy. In addition, Ban the Box measures may produce spillover effects in general equilibrium, as workers without criminal records may be displaced from directly affected sectors but find employment in other industries.” Shoag & Veuger, *supra* note 4, at 9-10 (emphasis added).

<sup>28</sup> *Id.* at 22.

<sup>29</sup> *Id.* at 21.

<sup>30</sup> Michelle Natividad Rodriguez, “Ban the Box” is a Fair Chance for Workers with Records at 2 (June 1, 2016), <http://www.nelp.org/publication/ban-box-fair-chance-workers-records/>.

<sup>31</sup> The EEOC has stated that consideration of such factors is necessary to uphold the anti-discrimination purpose of Title VII. See EEOC, *supra* note 5..

<sup>32</sup> Noah Zatz, *Ban the Box and Perverse Consequences, Part I*, OnLabor (Aug. 2, 2016), <https://onlabor.org/2016/08/02/ban-the-box-and-perverse-consequences-part-i/>. Professor Zatz also concluded: “At a minimum, though, we should recognize that the perverse consequences argument against Ban the Box represents a reluctant concession to our collective unwillingness to fight discrimination vigorously, not a principled advance toward racial justice.” *Id.*

<sup>33</sup> See, e.g., Sheryl Skaggs, *Producing Change or Bagging Opportunity? The Effects of Discrimination Litigation on Women in Supermarket Management*, 113 Am. J. Soc. 1148 (2008).

<sup>34</sup> Valerie R. Wilson, Ctr. on Budget & Policy Priorities, *The Impact of Full Employment on African American Employment and Wages* at 7 (Mar. 30, 2015), <http://www.epi.org/publication/the-impact-of-full-employment-on-african-american-employment-and-wages/> (finding that “tighter labor markets in the mid- to late-1990s served to effectively expand job opportunities for young job seekers who traditionally face greater barriers to employment”).