

SECOND AMENDED FORMAL COMPLAINT
OF ROBBIE ADJEI, ON BEHALF OF HERSELF AND
OTHERS SIMILARLY SITUATED

Robbie Adjei makes this formal EEO Complaint against the U.S. Census Bureau on behalf of herself and others similarly situated pursuant to 29 C.F.R. 1614.204, for rejecting their employment applications because of stale, unpredictable, sealed or prior arrest or criminal history. The Census Bureau's policy and practice of employment exclusion based on arrest or criminal history is race discrimination violative of Title VII because such a policy and practice has a disparate adverse impact on African-Americans and Latinos Ms. Adjei seeks a cessation of this policy and practice, compensatory damages, and other appropriate relief.

NATURE OF THE CLAIM

1. The Census Bureau will soon conclude hiring of over a million people to help conduct the 2010 census. As a pre-condition of employment, the Bureau has a policy and practice of conducting a name and date-of-birth check against the FBI's criminal history index. If done appropriately, this hiring practice would be a legitimate process to protect the public and ensure the integrity of the census. Unfortunately, the Census has chosen to conduct its criminal history screening ("Census Hiring Employment Check or CHEC") in a manner that treats job applicants as suspects unworthy to be hired and subjects them to arbitrary and racially discriminatory procedures.

2. The Census Bureau requires any job applicant whose name tentatively matches an arrest record—no matter whether they seek a job with public interaction or a desk job—to search for and produce official court documentation of his or her alleged involvement in the criminal justice system.

3. Without any indication of the nature of the arrest record retrieved by the Bureau, or a review of the record to determine the length of time passed since the arrest, or its job relatedness, the Census Bureau mandates that an applicant produce within 30 days “official” court records verifying the tentative match. For some people, this requirement can be literally impossible to meet, and for others it can be difficult, time-consuming and costly. Some states permit individuals who have successfully sealed their records to answer “no record” in response to a question about the record, others limit disclosure of old criminal histories, destroy stale records, or expunge falsely created records.

4. Because of the short time frame for and difficulty of obtaining the requested proof, people with sealed records, or who have never been prosecuted or convicted, or those with minor convictions are deterred or excluded from working for the Bureau. Moreover, the Bureau’s screening procedure also wrongfully screens out or unduly delays the eligibility determination of qualified applicants who would otherwise be suitable for hire. Given the time limited nature of the census jobs, the Bureau’s practice unjustifiably excludes deserving applicants from gainful employment. Equally troubling, the Bureau’s screening procedure also arbitrarily sets an artificial cutoff test score unrelated to the skills or duties of a position sought below which a suitable and qualified applicant will not be selected.

5. The Census Bureau’s pre-employment screening procedures are particularly pernicious for African-Americans and Latinos because their arrest and conviction rates far exceed those of whites nationwide. The Bureau’s policy and practice of excluding, delaying suitability determination for or rejecting people with stale, unpredictable or potential arrest and criminal history from census jobs has the result of discriminating on the basis of race, ethnicity and color.

6. Ms. Adjei brings this complaint on behalf of herself and others similarly situated on the grounds that the Census pre-employment criminal history screening policy and practice or CHEC has a racially disparate impact on African-Americans and Latinos in violation of Title VII and the EEOC's Guidance policy statements, particularly those on the use of arrest and criminal convictions in employment. Ms. Adjei seeks cessation of the Census' discriminatory policy and practice, compensatory damages, and other relief stated below.

FACTUAL BACKGROUND

A. COMPLAINANT ROBBIE ADJEI

7. Robbie Adjei is a 53-year-old African-American woman. She lives at 15 South Point Drive, Apt. 305, Dorchester, MA 02125. Her telephone number is 617-506-0825.

8. In December 2009, Ms. Adjei learned that the Census Bureau was looking for workers through an organization with which she is affiliated, Survival Inc., a community partner of the Census Bureau in Boston, Massachusetts.

9. On or about December 14, 2009, Ms. Adjei applied for one of several Census jobs at the Codman Square Library branch, 690 Washington Street, Dorchester, MA 02124. On the same day, she took the written test for an enumerator/census taker. She was informed that she passed the test. Given her 30 years of experience working in various fields, including serving as a Senior Clerk for the Department of Public Welfare and working with low-income and marginalized youth; her academic qualification as an individual with a Bachelor's degree in Legal Education from the University of Massachusetts; and her years of community involvement and familiarity with her neighborhood, she believed that she was a good candidate for the position and had a good chance of getting hired.

10. Ms. Adjei recalls that the Census job application asked whether she had ever been

arrested for a felony and she truthfully responded. Although her Massachusetts criminal history has been successfully sealed, she has an 11-year-old breach of peace record from the State of Connecticut.

11. By letter dated December 16, 2009 (“the December 16 letter”, attached herein as Ex. 1), the Census Bureau informed Ms. Adjei that “a pre-appointment name check against the Federal Bureau of Investigation resulted in a tentative match between [her] and an arrest record in the FBI criminal history index.” The letter did not indicate what the “arrest record” was or give any further information about whether there was anything specific in the “arrest record” that the Census Bureau found to be of concern.

12. Because the December 16 letter did not identify the “arrest record in question,” Ms. Adjei was not sure what record she was supposed to respond to and what official court documentation she was expected to provide. Notwithstanding, on or about December 19, 2009, she sent the Census Bureau copies of documents issued by the Massachusetts Trial Court, Office of the Commissioner of Probation (“OCP letters”), dated July 26, 2006, and January 8, 2009, (both of which are attached herein as Ex. 2) documenting that she had about eleven arraignment dates for charges spanning 1974 to 1998, which had all been successfully sealed.¹ Ms. Adjei also provided the Census Bureau with a copy of her 1999 Connecticut conviction for breach of peace (attached herein as Exhibit 3).

13. By letter dated January 5, 2010, (“January 5 letter”, attached herein as Ex. 4), the Census Bureau informed Ms. Adjei that “in response to the documentation received regarding [her] previous arrests, [i]n order to proceed with [her] background investigation, [she] must provide an original set of fingerprints to our office.” Ex. 4. On January 8, 2010, in response to

¹ Under Massachusetts General Laws, chapter 276, section 100A, a petitioner who successfully seals her record can answer “no record” in response to an inquiry about her criminal history.

the January 5 letter, she sent her fingerprints as requested.

14. In spite of numerous follow-up phone calls, the Bureau did not hire Ms. Adjei. On February 19, 2010, Ms. Adjei filed an Informal EEO Complaint based on the Census Bureau's inaction or constructive rejection of her employment application. Ms. Adjei challenged the Census Bureau's policy and practice of rejecting job applicants whose names tentatively match a criminal history in the FBI's database as having a racially disparate impact in violation of Title VII and EEOC's policy statements.

15. On March 25, 2009, Ms. Adjei's counsel received her "Certification of Final Interview and Notice of Right to File a Formal EEO Complaint." Because the Bureau had still not hired Ms. Adjei, on April 6, 2010, she filed a formal Complaint on behalf of herself and others similarly situated.

16. Subsequent to her formal administrative class action complaint, on May 20, 2010, Ms. Adjei was notified that she "need[ed] to provide official court documentation regarding the final outcome of an arrest dated 07/02/1999, Assault 3rd, State Police B of I Middletown" (See "Arrest Record Verification Letter", attached herein as Ex. 5). Although the Arrest Record Verification Letter did not specify the state in which the arrest arose or the court where the charge was prosecuted, by letter dated June 1, 2010, (attached herein as Ex. 6), Ms. Adjei provided the Bureau's Census Hiring Employment Check staff with a copy of an 11-year-old "Breach of Peace 2nd degree" charge in the State of Connecticut. (See Ex. 3 *infra*).

17. On June 4, 2010, the Bureau informed Ms. Adjei that she had been determined "available for hire based on the information [that she] provided." (See Ex. 7). As she was instructed to do, Ms. Adjei promptly contacted the Boston Regional Census Center on or about June 7 and June 11, 2010. She was told that there were no positions available.

18. Although Ms. Adjei successfully passed the enumerator/census-taker examination, ultimately scaled the Bureau's criminal history review process, and was eventually determined suitable for hire, she has been informed, and she believes that the Bureau has a policy and practice of ranking applicants on an "eligibility list" based solely on their test scores, and subsequently hiring applicants from the top score down. The Bureau also has set an artificial cutoff test score below which an experienced and suitable applicant like Ms. Adjei would not be selected for the position sought.

19. To date, the Census Bureau has not hired Ms. Adjei.

B. THE BUREAU'S EMPLOYMENT SCREENING PROCESS AND ITS DISCRIMINATORY IMPACT

20. The Census Bureau letter requiring a job applicant whose name matches an existing record to produce court documentation "on any and all arrest(s) and/or conviction(s)" within 30 days (hereinafter the 30-day letter) imposes three burdens. One, it screens out applicants with arrests but no convictions, even though the EEOC's policy "concludes that since the use of arrest records as an absolute bar to employment has a disparate impact on some protected groups, such records alone cannot be used to routinely exclude persons from employment" absent a showing that the alleged conduct indicates unsuitability for a particular position. Two, it screens out all otherwise eligible applicants who would be suitable for hire, even though the EEOC's stated policy prohibits blanket exclusion of persons with criminal history and requires that individualized determinations be made consistent with the job duties of a position sought. Three, the letter requires documentation of "any and all" arrests, even though the Bureau's stated policy is to address only a conviction or pending charge "that affects hiring eligibility."

21. Unlike the named Complainant whose resourcefulness resulted in her securing documentation of her sealed records and timely providing them to the Census Bureau, many applicants faced with the timeline imposed by the 30-day letter encounter insurmountable hurdles. Some applicants are unclear about the process for obtaining official court records, especially those with only remote interaction with the criminal justice system. The 30-day letter fails to provide even the simplest advice on which records to obtain and how to obtain them, not even a list of phone numbers or web sites. Indeed, obtaining such records often requires sophistication about the background record-keeping system, which varies widely from state-to-state and locality-to-locality.

22. Furthermore, the directive to applicants with criminal records has no geographical limitation. For many, the criminal record is from former residence in a distant state. Most Census applicants do not have the financial means to travel, and the pay-off of a temporary, albeit modest-wage position would not justify the expense. Yet, locating the site where the records are kept, having a clerk pull the record from archives, copy them and mail them can be costly for the applicant and adds significant time to the process.

23. Additionally, each state maintains its own repository of criminal records. For many people seeking their criminal records, this is the most obvious source of retrieval, especially since each repository has automated features and can be contacted on-line. However, many criminal records that appear in the FBI database are not accessible to applicants through their state repositories. Indeed, well over 10% of criminal records nation-wide are in what the Department of Justice terms "Closed Record States," where criminal records are not readily available to Census applicants due to strict limitations on production.

24. Even after a resourceful applicant like the named Complainant has undertaken the burden and expense of locating and timely responding to the Bureau's overly broad request for criminal history information, successfully survived the Bureau's CHEC process, passed the Bureau's written examination, and ultimately declared suitable for hire, she is then subjected to a ranking scheme based strictly on test score unrelated to experience or the duties of the position sought. Yet, the E.E.O.C. Employment Tests and Selection Procedures Guidance (2009), deems such use of employment testing discriminatory in that it has the effect of excluding applicants based on race without being consistent with business necessity.

25. The Census Bureau's screening procedures effectively import severe racial and ethnic disparities in the criminal justice system into the employment process, thereby multiplying the negative impact on African American and Latino job applicants with arrest and minor conviction histories.

26. Racial disparities in the U.S. criminal justice system are extreme. African Americans and Latinos are far more likely to have arrest records and convictions than whites. While African Americans make up 12.3% of the population, they account for approximately 28.3% of arrests, and 38% of felony convictions nation-wide. Put differently, in 2007, roughly 91 in 1,000 African Americans were arrested, compared with 34 in 1,000 Whites. Similarly, Latinos are arrested at rates approximately twice their proportion of the population. Latinos likewise are incarcerated at a rate twice that of whites.²

27. A high proportion of arrests are for especially minor crimes, such as curfew and loitering violations, vagrancy, and disorderly conduct, which account for almost 10% (over 1.2 million) of all arrests per year. African Americans are far more likely (by as much as 15 times) than whites to be arrested for low-level offenses. Yet very few (less than 20%) of the arrests of

² The statistics cited in this Complaint are derived from publicly available sources and are subject to that limitation.

African Americans for these offenses result in convictions. Additionally, the vast majority of those arrested are not charged with serious offenses.

CLASS ACTION ALLEGATIONS

28. Complainant Robbie Adjei brings these class allegations under 29 C.F.R.

1614.204 on behalf of a class defined as:

All African American, Latino and Native American persons who applied for employment with the United States Census Bureau as Census Takers (also known as Enumerators), Census Crew Leaders, Recruiting Assistants, and/or Clerks, who were sent a version of the 30-day letter, for whom there is no record of plea or conviction (excluding those with charges pending at the time of application), or who are otherwise eligible or deemed available for hire based on the Census Bureau's criminal background exclusion factors, and who were not hired by the Census Bureau, between the commencement of temporary hiring for the 2010 census and the date of judgment in this action ("the Class").

29. Complainant Robbie Adjei is a member of the Class, which includes (1) applicants who were deterred from complying with the 30-day letter and did not respond to it, (2) applicants who responded to the 30-day letter (regardless of whether the response was ultimately deemed adequate or timely), 3) applicants who were suitable for hire but wrongfully screened out and were not hired or have not been given a final response to their application, and (4) applicants who were ranked on an eligibility list but whose test scores were deemed insufficiently high to be selected for positions sought.

30. The members of the Class are so numerous that joinder of all of them is impracticable. The Census Bureau recruits for decennial positions throughout the United States and plans to have approximately 4 million applicants, from which it will hire approximately 1.4 million people for the 2010 census. The Bureau conducts its uniform arrest screen or CHEC on all of these applicants.

31. There are questions of law and fact common to the Class, and these questions predominate over any questions affecting only the individual named agent. Common questions include, but are not limited to:

(1) Whether it is the Census Bureau's policy or practice to deter or exclude temporary job applicants with criminal history who have never been convicted or who are otherwise eligible for employment based on the Census Bureau's criminal background exclusion factors;

(2) Whether the Census Bureau's policy or practice to deter or exclude job applicants based on criminal history records has a disparate impact on African American, Latino, and Native American applicants;

(3) Whether the Census Bureau's policy or practice to deter or exclude job applicants based on their criminal history records is job related and consistent with business necessity;

(4) Whether less discriminatory policies exist that would meet the Census Bureau's legitimate needs;

(5) Whether the Census Bureau's policy or practice of setting an artificial test score cutoff and excluding otherwise suitable applicants based on test score ranking is sufficiently job related and consistent with business necessity; and

(6) What equitable and injunctive relief for the Class is warranted.

It is notable for commonality that the Census Bureau acknowledges that Census has a *single, uniform* background check procedure that is used for *all* decennial applicants.

32. Complainant Robbie Adjei's claims are typical of the claims of the Class:

(1) Each of the Complainants applied for a temporary position in the 2010 Census;

(2) Each was processed through the same application procedure;

(3) Each was subjected to substantially the same screening devise;

(4) Each was sent substantially the same form letter that constructively denied them the position or deterred them from pursuing the job further; and

(5) Each has the same discrimination claim based on disparate impact. All of these claims are shared by each and every class member.

33. Complainant Robbie Adjei will fairly and adequately represent and protect the interests of the members of the Class. Complainant has no conflict with any class member. Complainant is committed to the goal of having the Census Bureau revise its hiring policy and practice to reduce or eliminate its discriminatory impact on African American, Latino, and Native American applicants.

34. Complainant Robbie Adjei has retained counsel competent and experienced in class actions, employment discrimination litigation, and the intersection thereof.

35. Class certification is appropriate pursuant to 29 C.F.R. 1614.204 because the Census Bureau has acted and/or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to complainant and the Class as a whole. The Class members are entitled to injunctive relief to end the Census Bureau's common, uniform, unfair, and discriminatory policies and/or practices.

CLAIM FOR RELIEF
(Title VII of the Civil Rights Act of 1964,
42 U.S.C. §§ 2000e et seq.)

36. Complainant Robbie Adjei incorporates by reference the allegations in all preceding paragraphs.

37. Complainant Robbie Adjei brings this claim on her own behalf and on behalf of the Class.

38. The Census Bureau's policy and practice of using a pre-employment screen that

deters or excludes applicants with arrest or irrelevant conviction records from obtaining employment opportunities has harmed, and continues to harm, Complainant and the Class, and constitutes unlawful race, color, ethnicity and/or national origin discrimination in violation of 42 U.S.C. §§ 2000e *et seq.*

39. The Census Bureau's policy and practice of using a pre-employment screen that deters or excludes applicants with arrest or irrelevant conviction records from obtaining employment opportunities has a disparate impact on African Americans, Latinos, and Native Americans, and is neither job related nor consistent with business necessity. Even if the Census Bureau's policy and practice of denying employment opportunities based on applicants' criminal history records could be justified by business necessity, less discriminatory alternatives exist that would equally serve any legitimate purpose.

40. The Census Bureau's policy and practice of unreasonably delaying suitability determination for otherwise qualified applicants with arrest or irrelevant conviction records and denying them employment opportunities has harmed, and continues to harm, Complainant and the Class, and constitutes unlawful race, color, ethnicity and/or national origin discrimination in violation of 42 U.S.C. §§ 2000e *et seq.*

41. The Census Bureau's policy and practice of unreasonably delaying suitability determination for otherwise qualified applicants with arrest or irrelevant conviction records and denying them employment opportunities has a disparate impact on African Americans, Latinos, and Native Americans, and is neither job related nor consistent with business necessity. Even if the Census Bureau's policy and practice could be justified by business necessity, less discriminatory alternatives exist that would equally serve any legitimate purpose.

42. The Census Bureau's policy and practice of using artificial test score cutoff and

ranking to deny employment opportunities to applicants unrelated to experience or job duties has harmed, and continues to harm, Complainant and the Class, and constitutes unlawful race, color, ethnicity and/or national origin discrimination in violation of 42 U.S.C. §§ 2000e *et seq.*

43. The Census Bureau's policy and practice of using arbitrary test score cutoff and ranking to deny employment opportunities to applicants unrelated to experience or job duties has a disparate impact on African Americans, Latinos and Native Americans in violation of 42 U.S.C. §§ 2000 *et seq.* Even if the Census Bureau's policy and practice could be justified by business necessity, less discriminatory alternatives exist that would equally serve any legitimate purpose.

44. Complainant and the Class have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Complainant and the Class they seek to represent are now suffering, and will continue to suffer, irreparable injury from the Census Bureau's discriminatory acts and omissions.

45. The Census Bureau's conduct has caused, and continues to cause, Complainant and the members of the Class substantial losses in earnings and other employment benefits.

REQUEST FOR RELIEF

WHEREFORE, Complainant and the Class request for relief as follows:

46. Certification of the complaint as a class action on behalf of the proposed Class;
47. Designation of class agent, Complainant Robbie Adjei, as representative on behalf of the Class;
48. Designation of Representative Complainant's counsel of record as Class counsel;
49. A declaratory judgment that the practices complained of herein are unlawful and

violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*

50. A preliminary and permanent injunction against the Census Bureau and all officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, customs and usages set forth herein;

51. An order that the Census Bureau institute and carry out policies, practices, and programs that provide equal employment opportunities for all applicants, and that the Census Bureau eradicate the effects of past and present unlawful employment practices;

52. In particular, Complainant requests that the agency:

- a. Require that all applicants with a record of arrest and no disposition in the FBI database (and for whom charges are not pending at the time of review) shall be given the same consideration as applicants whose names do not appear in the FBI database, unless Census provides documented evidence that the individual has been convicted of a crime of violence or dishonesty that is properly excludable pursuant to the Uniform Guidelines for Employee Selection Procedures (“UGESP”) and related EEOC guidance;
- b. Require that all applicants whose arrest or criminal histories have been lawfully sealed not be disqualified from the jobs which they seek;
- c. Require that all applicants with an FBI record of conviction for a crime that does not include violence or dishonesty that is properly excludable under UGESP shall be given the same consideration as applicants whose names do not appear in the FBI database;

- d. Consistent with (a) and (c) above, require that all applicants with convictions for crimes of violence or dishonesty that are excludable under UGESP promptly (within one week) shall be given a written description of the conviction(s) (or pending charge) that forms the basis for presumptive exclusion from temporary employment with Census;³ and
- e. Require that the Census Bureau ask each presumptively excludable applicant in (d) if they contest the identified conviction(s), and, for pending charges, whether a disposition has occurred. Each such individual must be provided with a meaningful opportunity to meet Census' explicit exception for anyone who "demonstrates that he or she does not present a current threat," through evidence of rehabilitation, an explanation of events leading to the conviction, or other mitigating factors; such evidence must be evaluated promptly by Census.

53. An order restoring the Complainant and Class members to their rightful positions at the Census Bureau as applicants, or in lieu of instatement, an order for front pay and benefits;

54. An order restoring the Complainant and otherwise suitable Class members excluded from positions sought because of arbitrary test score cutoffs and ranking to the jobs they would have occupied had an appropriate pass/fail criteria been employed, or in lieu of instatement, an order for front pay and benefits;

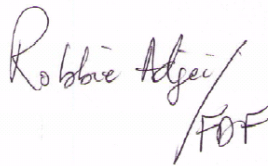
55. Back pay accruing as a result of a delay in hiring Complainant and Class members caused by the unlawful procedures, policies and practices alleged herein;

³ Failure to provide the relevant contents of the applicant's rap sheet contravenes the U.S. Attorney General's position that job applicants with a criminal record have a right to "a meaningful opportunity to see the information and correct any inaccuracies." (*The Attorney General's Report on Criminal History Background Checks*, p. 1).

56. Costs incurred herein, including reasonable attorneys' fees to the extent allowable by law, including but not limited to 42 U.S.C. §§ 2000e-5(k) & 2000e-16, 29 C.F.R. 1614.501(e);
57. Pre-judgment and post-judgment interest, as provided by law; and
58. Such other and further legal and equitable relief as this agency deems necessary, just, and proper.

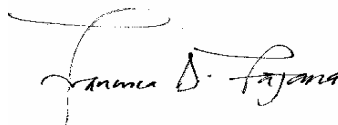
Dated: July 16, 2010

Respectfully submitted,

Handwritten signature of Robbie Adjei in cursive, with the initials 'RAF' written below the signature.

Robbie Adjei

By Her Attorney,

Handwritten signature of Francisca D. Fajana in cursive.

Francisca D. Fajana
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