

# Kirk: We are rolling back civil rights when it comes to employment decisions

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BY DAVID KIRK - SPECIAL TO THE AMERICAN-STATESMAN

Four U.S. presidents and esteemed leaders of the Civil Rights Movement have descended on Austin this week to commemorate the 50th anniversary of the historic passage of the Civil Rights Act of 1964. This is a proud moment for the state of Texas and our country. Yet in the midst of rejoicing, we should not forget that the fight to ban discrimination in hiring and firing in the workplace, as set out specifically in the Civil Rights Act, is far from over.

People make mistakes and our criminal justice system punishes them accordingly. However, all too often individuals who have served their time and are no longer a threat to society are punished for the remainder of their lives because they are branded with a scarlet letter and barred from employment.

The United States has the highest incarceration rate in the world, topping even Rwanda and Russia. And Texas, with 150,000 persons incarcerated in its prisons, has more than any other state. Roughly 36 percent of the Texas prison population is African American, yet just 12 percent of the population statewide is black. Nationwide, one in three African American males will go to prison at some point in their lifetime versus one in 18 White males.

Compounding the consequences of this racial disparity is the fact that many employers in Texas and across the country, both private and public, have blanket policies barring consideration of job applicants with a criminal record. Although seemingly neutral on their face, in

practice these policies often are in violation of the landmark law we are celebrating this week that bars employment decisions based on race. The reason for this is simple: black applicants are disproportionately impacted because they are overrepresented in the criminal justice system.

Take, for example, Veronica Villalpando, a happily married, African American mother of two. She has a bachelor's degree and a master's degree in social work from Texas State University. Her dream is to use her degrees to work with children, in the hopes of helping them avoid the problems associated with the foster care system and abuse that she experienced as a child. There is one significant hurdle to fulfilling her professional dream and potential: Villalpando was convicted of aggravated assault in 2001 for defending herself in a struggle against an abusive boyfriend. She spent two years in prison, and has not been in trouble with the law since her release. Nevertheless, because of her criminal record, Villalpando has been unable to maintain employment that allows her to work with children, a job that she is trained for and uniquely qualified to do.

Many employers justifiably want to protect their customers and employees from potential harm. As made clear by the U.S. Equal Employment Opportunity Commission (EEOC), the oversight authority created in the Civil Rights Act, it is legal for employers to conduct criminal background checks and to use the information in hiring decisions. What may constitute a civil rights violation, according to EEOC guidelines, is if hiring policies that exclude persons with a criminal record are not based on some kind of business necessity. For instance, it is surely legal to not hire a convicted child predator for a job as a teacher, as this could present a clear safety risk. Yet someone who paid her time for a drug offense or for defending herself against an abusive boyfriend, such as

Mrs. Villalpando, shouldn't forever be denied the opportunity for meaningful, stable employment. Indeed, research convincingly shows that the probability of a former offender engaging in crime declines dramatically since the time of his or her last offense.

The mass incarceration of African Americans in recent decades and prevalent employer policies refusing to hire individuals with a criminal record, remind us how much work remains. To truly honor the Civil Rights Act of 1964, we should provide at least the possibility for stable employment for those individuals like Veronica Villalpando who seek to rebuild their lives and make amends for their past mistakes. That is why I urge all employers in Texas to follow the EEOC's guidelines when considering the use of criminal records in employment decisions.

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