



September 23, 2020

To Brian Chesky, Nathan Blecharczyk, and Joe Gebbia:

We write to express great disappointment and concern over Airbnb’s continued use of a broad, vague, and unjustifiably exclusionary background check policy to ban people from using its platform. This is particularly upsetting considering Airbnb’s recent tweet about its purported support of Black lives.<sup>1</sup> The criminal legal system, which produces arrest and conviction records in the United States, unjustly and disproportionately targets Black communities. Airbnb’s use of these records as a mechanism for exclusion is not only ineffective and irrelevant to the question of safety, but it also perpetuates stereotypes that are fundamentally erroneous and constitutes an expansion of an unjust system of discrimination. **Airbnb should honestly acknowledge the realities of the broken and racist criminal legal system and stop using criminal background checks in the United States.**

Reliance on arrest and conviction records to ban prospective users expands and perpetuates the wrongs that police officers and the criminal legal system have perpetrated on Black people. This reliance attacks individuals’ dignity, defines people by a snapshot in time, and contributes to ongoing exclusion from society because of prior contact with the criminal legal system. Through its background check policy, Airbnb deprives people with conviction records of the opportunity to spend time with loved ones, engage in new experiences, and gain economic benefits from hosting and accessing more affordable housing options available through its platform.

**Airbnb’s use of past arrest and conviction records as a predictor of future safety incidents on properties available on the Airbnb platform is ineffective and uses people who have these records as scapegoats for safety issues that have no relationship to these records.** The assumption that banning people with arrest or conviction records will prevent “incidents” during Airbnb stays relies on the inaccurate belief that these records are a sound foundation for making assumptions about people, future behavior, and safety. This assumption is false. There are pernicious and pervasive injustices, and outright inaccuracies, at all stages of the criminal legal process that make the records produced by the system unjust, racist, and blatantly inaccurate. The result is that Airbnb is forcing Black individuals who are trying to

make travel plans or offer their homes as destination options to bear the discriminatory burden of catering to racialized public fear.

**In the wake of the recent killings and brutality against black people—including George Floyd, Breonna Taylor, Tony McDade, and Jacob Blake—there have been widespread public calls for investigations** into the police departments involved and for defunding police departments across the United States. **These horrendous and inexcusable incidents, exposed only because they were caught on video, represent a small fraction of the racist reality of state violence against and targeting of Black people.** There is extensive documentation of the systemic and structural problems that enable racist targeting of Black people in the criminal legal system.<sup>2</sup> Structural bias in the criminal legal system often begins with police officer discretion in deciding what neighborhoods to police and whom to arrest<sup>3</sup> and flows through to several other points in this system, including: prosecutorial discretion in whether to rely on police officers' accounts of an incident<sup>4</sup> (with no accountability for reliance on incident accounts from officers known to have lied or to have behavioral/violence problems<sup>5</sup>), prosecutorial discretion in what charges to bring (with no accountability about racial disparities in those charging decisions<sup>6</sup>), prosecutorial power in plea bargaining,<sup>7</sup> reliance on police officer testimony at trial while refusing to allow records of officer misconduct to come to light,<sup>8</sup> laws that shield officers from accountability for abusive and problematic behavior,<sup>9</sup> consistently under-funded and understaffed public defense systems,<sup>10</sup> and the incentives of a for-profit prison system.<sup>11</sup> Even the federal government has long been concerned about police officer practices. Since the late 1990s, the Civil Rights Division of the United States Department of Justice has opened at least 69 formal investigations into pattern and practice issues in police departments in the United States.<sup>12</sup>

**This well-documented systemic bias and racism in the criminal legal system has devastated Black communities in the United States.** For example, although Black people make up only approximately 13.4% of the population in the United States,<sup>13</sup> as of 2016, Black Americans comprised 27% of all individuals arrested in the United States—double their share of the total population.<sup>14</sup> Black youth accounted for 15% of all U.S. children, yet made up 35% of juvenile arrests in that year.<sup>15</sup> While only 8% of the overall population has a felony conviction, 33 percent of Black males have a felony conviction.<sup>16</sup> **Arrest and conviction records are the product of this system and are thus inherently unreliable, ineffective, and biased. And yet, Airbnb uses these records to determine who can use their platform and who cannot.**

**Essentially, Airbnb's policy means it has no accountability for the way it treats people with arrest and conviction records.** Under the policy, the company has given itself wide discretion to ban users based on vague conclusions about arrest and conviction records without an explanation of its decision-making. For example, Airbnb's website states that "[u]sers with serious criminal histories may be removed or referred for further review if our checks show convictions within a certain time period."<sup>17</sup> The time period for exclusion from the platform could range from 14 years from the time of conviction to an indefinite ban. There is no explanation of: (i) what a "serious criminal history" means from Airbnb's perspective, (ii) what the process is for decision making about whether someone gets banned based on that "history," (iii) whether there is any attempt to ensure the accuracy of the record relied upon, (iv) who makes banning decisions, (v) what "referred for further review" means, or (vi) the specifics of any process to contest removal from the platform. Airbnb's policy is far more draconian than

those implemented in major cities across the United States.<sup>18</sup> This policy is not in keeping with the company's purported philosophy of inclusiveness and human understanding or Airbnb's recent twitter support of Black lives.

**As a result of this policy, Airbnb unjustly excludes people with arrest and conviction records, and disproportionately excludes Black people, from affordable travel options and from income opportunities as hosts through its platform.** With respect to more affordable travel options, a 2016 study found that the average cost of renting a home on Airbnb is cheaper than a single hotel room<sup>19</sup> and at least 53% of Airbnb guest users surveyed said that they use Airbnb because of the price options.<sup>20</sup> As of 2016, 49% of Airbnb guest users used the platform as an alternative to hotels.<sup>21</sup> Users who are hosts could pay approximately 80% of their rent by listing a two-bedroom home.<sup>22</sup> A real estate survey found that in New York City, 74% of Airbnb hosts in neighborhoods that were at the highest risk of gentrification were white, while the resident white population was only 14%. **Airbnb hosts of color in those neighborhoods earned only \$48 million while white hosts in those neighborhoods earned approximately \$160 million.**<sup>23</sup>

**Airbnb does not look at arrest and conviction records in most of the world, so why use discriminatory and unreliable arrest and conviction records in the United States?** Airbnb operates in over 191 countries across the globe and only runs background checks on users in the United States and a handful of other countries.<sup>24</sup> Rates of victimization and crime in the United States are comparable to or less than other developed countries, and yet the United States is the only country where the company relies extensively on arrest and conviction records to exclude potential users.<sup>25</sup> This alone reveals the fallacy of Airbnb's reliance on arrest and conviction records to make assumptions about who should be on the Airbnb platform in the United States.

**Because arrest and conviction records are the product of a discriminatory, flawed, and inaccurate system, it is irresponsible and inappropriate to rely on them to evaluate people, predict behavior, or assess safety.** Airbnb should cease using arrest and conviction records to justify banning people from the platform, because reliance on the records perpetuates and legitimizes structural racism at the continued expense of Black individuals and communities. Airbnb must strive in its actions, not just its words, to be fair and inclusive.

It is our continued hope that Airbnb will actually and meaningfully support Black lives by ending its use of arrest and conviction records to decide who may use and benefit from its platform.

American Civil Liberties Union  
John Jay College Institute for Justice and Opportunity  
Legal Action Center  
The Bronx Defenders  
Community Service Society of New York  
The Precedential Group

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<sup>1</sup> @Airbnb, *Twitter*, (June 1, 2020), <https://twitter.com/airbnb/status/1267536619164151808?lang=en>.

<sup>2</sup> Elizabeth Hinton, LeShae Henderson & Cindy Reed, *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*, Vera Institute of Justice (2018). Available at: <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>.

<sup>3</sup> Shaily Krishan, et al., *The Influence of Neighborhood Characteristics on Police Officers' Encounters with Persons Suspected to Have a Serious Mental Illness*, 37:4 *Int'l. Journal of Law and Psychiatry*, (July–Aug 2014) 359–369. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4929689/>; Jennifer L. Eberhardt, et al., *Seeing Black: Race, Crime, and Visual Processing*, 87:6 *Journal of Personality and Social Psychology* (2004), 876–93 at 878. Available at: <https://perma.cc/XS7F-3B48>.

<sup>4</sup> Somil Trivedi & Nicole Gonzalez Van Cleve, *To Serve and Protect Each Other: How Police-Prosecutor Codependence Enables Police Misconduct*, 100:895 *Boston University Law Review* (2020), 895–933. Available at: <https://www.bu.edu/bulawreview/files/2020/05/05-TRIVEDI-VAN-CLEVE.pdf>.

<sup>5</sup> *Id.*; Mark Joseph Stern, *The Police Lie. All the Time. Can Anything Stop Them?*, *Slate* (Aug. 4, 2020), <https://slate.com/news-and-politics/2020/08/police-testifying.html>; Joseph Goldstein, 'Testifying' by Police: A Stubborn Problem, *N.Y. Times* (Mar. 18, 2018), <https://www.nytimes.com/2018/03/18/nyregion/testifying-police-perjury-new-york.html>.

<sup>6</sup> Vera Institute of Justice, *The Discretionary Power of Prosecutors*. Available at: <https://perma.cc/YM5X-B7DX>; Michael Wines, *Prosecutors Had the Wrong Man. They Prosecuted Him Anyway.*, *N.Y. Times* (Jan. 17, 2018), <https://www.nytimes.com/2018/01/17/us/prosecutors-new-orleans-evidence.html>; Angela J. Davis, *In Search of Racial Justice: The Role of the Prosecutor*, 16:821 *NYU Journal of Legislation and Public Policy* (2013), 821–51. Available at: <https://nyujlpp.org/wp-content/uploads/2014/01/Davis-In-Search-of-Racial-Justice-16nyujlpp821.pdf>.

<sup>7</sup> Gretchen Gavett, *The Problem With Pleas*, PBS (Oct. 31, 2011), <https://www.pbs.org/wgbh/frontline/article/the-problem-with-pleas/>; Davis, *In Search of Racial Justice*.

<sup>8</sup> Stephanie Wykstra, *The fight for transparency in police misconduct, explained*, *Vox* (June 16, 2020), <https://www.vox.com/2020/6/16/21291595/new-york-section-50-a-police-misconduct>; Kendall Taggart & Mike Hayes, *Secret NYPD Files: Officers Who Lie And Brutally Beat People Can Keep Their Jobs*, *BuzzFeed News* (Mar. 5, 2018), <https://www.buzzfeednews.com/article/kendalltaggart/secret-nypd-files-hundreds-of-officers-committed-serious>; WNYC, <https://project.wnyc.org/disciplinary-records/> (last visited June 9, 2020).

<sup>9</sup> David G. Savage, *Supreme Court is Faulted for Shielding Police Officers from Excessive-Force Claims*, *L.A. Times* (June 4, 2020), <https://www.latimes.com/politics/story/2020-06-04/supreme-court-is-faulted-for-shielding-police-officers-from-excessive-force-claims>; Erin E. Evans, *Police Secrecy Law Keeps Public in the Dark About Police Misconduct*, *NBC News* (May 19, 2019), <https://www.nbcnews.com/news/us-news/police-secrecy-law-keeps-public-dark-about-police-misconduct-n1006786>; Ginia Bellafante, *Why Secrecy Laws Protecting Bad Officers Are Falling*, *N.Y. Times* (June 9, 2020), <https://www.nytimes.com/2020/06/05/nyregion/police-records-50a.html>.

<sup>10</sup> Richard A. Oppel Jr. & Jugal K. Patel, *One Lawyer, 194 Felony Cases, and No Time*, *N.Y. Times* (Jan. 31, 2019), <https://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html>; Phil

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<sup>11</sup> Tara Joy, *The Problem with Private Prisons*, Justice Policy Institute (Feb. 2, 2018), <http://www.justicepolicy.org/news/12006>; Kara Gotsch & Vinay Basti, *Capitalizing on Mass Incarceration: U.S. Growth in Private Prisons*, The Sentencing Project (Aug. 2, 2018), <https://www.sentencingproject.org/publications/capitalizing-on-mass-incarceration-u-s-growth-in-private-prisons/>; Liberty Vittert, *The Cold Hard Facts About America's Private Prison System*, Fox News (Dec. 19, 2018), <https://www.foxnews.com/opinion/the-cold-hard-facts-about-americas-private-prison-system>.

<sup>12</sup> The Civil Rights Division's Pattern and Practice Reform Work: 1994-Present, (Jan. 2017), <https://www.justice.gov/crt/file/922421/download>.

<sup>13</sup> Quick Facts, *United States Census Bureau*, <https://www.census.gov/quickfacts/fact/table/US/PST045219#qf-headnote-a> (last visited Sept. 9, 2020).

<sup>14</sup> FBI Uniform Crime Reporting Program. Crime in the United States 2016. Available at: <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/>.

<sup>15</sup> Puzzanchera, C., Sladky, A. and Kang, W. (2017). Easy Access to Juvenile Populations: 1990-2016. Available at: <https://www.ojjdp.gov/ojstatbb/ezapop/>; OJJDP Statistical Briefing Book. Available at: [http://www.ojjdp.gov/ojstatbb/crime/JAR\\_Display.asp?ID=qa05260](http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05260).

<sup>16</sup> Alan Flurry, *Study Estimates U.S. Population with Felony Convictions*, UGA Today (Oct. 1, 2017), <https://news.uga.edu/total-us-population-with-felony-convictions/>.

<sup>17</sup> Does Airbnb Perform Background Checks on Members?, *Airbnb*, <https://www.airbnb.com/help/article/1308/does-airbnb-perform-background-checks-on-members> (last visited Sept. 9, 2020).

<sup>18</sup> Mariko Lockhart, *Fair Chance Housing*, Seattle Office for Civil Rights, <https://www.seattle.gov/civilrights/civil-rights/fair-housing/fair-chance-housing> (last visited Sept. 22, 2020); Councilmember Nikki Fortunato Bas, *Oakland Now Has the State's Strongest Fair Chance Housing Law to Support Returning Community Members*, City of Oakland (Feb. 21, 2020), <https://www.oaklandca.gov/news/2020/oakland-now-has-the-states-strongest-fair-chance-housing-law>; Rachel Monahan, *Portland City Council Passes New Tenant Protections Aimed at Helping People With Criminal Histories*, Willamette Week (June 19, 2019), <https://www.wweek.com/news/city/2019/06/19/portland-city-council-passes-new-tenant-protections-aimed-at-helping-people-with-criminal-histories/>.

<sup>19</sup> Alison Griswold, *You Can Rent an Entire Home on Airbnb for the Price of a Hotel Room in the U.S.*, Quartz (Sept. 16, 2016), <https://qz.com/779121/airbnb-vs-hotel-cost-comparison-you-can-rent-an-entire-home-on-airbnb-for-the-price-of-a-hotel-room/>.

<sup>20</sup> Airbnb by the Numbers: Usage, Demographics, and Revenue Growth, *Much Needed* (Feb. 17, 2020), <https://muchneeded.com/airbnb-statistics/>.

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

<sup>22</sup> Nick Wallace, *Where Do Airbnb Hosts Make the Most Money?*, Smart Asset (Feb, 20, 2018), <https://smartasset.com/mortgage/where-do-airbnb-hosts-make-the-most-money>.

<sup>23</sup> iPropertyManagement, *Airbnb Statistics*, <https://ipropertymanagement.com/research/airbnb-statistics> (last visited Sept. 22, 2020).

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<sup>25</sup> Michelle Ye Hee Lee, *Yes, U.S. Locks People Up at a Higher Rate Than any Other Country*, Washington Post (July 7, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/>.