

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

DEFY VENTURES, INC., 3550
Wilshire Blvd., Ste 1550, Los Angeles,
CA, 90010;

SEKWAN MERRITT, 2123 Brigadiere
Blvd, Odenton, MD, 21113, Anne
Arundel County;

**PROP PREP PROPERTIES, LLC
d/b/a LIGHTNING ELECTRIC**, 3520
Ailsa Avenue, Baltimore, MD, 21214,
Baltimore County;

JOHN D. GARLAND, 218-32 99th Ave,
Queens Village, NY, 11429;

**SIGN ME UP BETHPAGE, INC. d/b/a
FASTSIGNS 2323**, 392 North Wantagh
Avenue, Bethpage, NY, 11714,

Plaintiffs,

v.

**UNITED STATES SMALL BUSINESS
ADMINISTRATION**, 409 3rd St., SW,
Washington, DC, 20416;

JOVITA CARRANZA, *in her official
capacity as Administrator*, U.S. Small
Business Administration, 409 3rd St.,
SW, Washington, DC, 20416;

**UNITED STATES DEPARTMENT OF
THE TREASURY**, 1500 Pennsylvania
Ave., NW, Washington, DC, 20220;

STEVEN MNUCHIN, *in his official
capacity as Secretary*, U.S. Department of
the Treasury, 1500 Pennsylvania Ave.,
NW, Washington, DC, 20220,

Defendants.

Civil Action No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. In the first quarter of 2020, the United States economy suffered its most severe contraction in more than a decade. As the threat of the novel coronavirus mushroomed into the country's gravest public health crisis in a century, businesses were forced to shutter.

2. Small-business owners, in particular, faced a dire struggle for survival. According to federal data, between February and April, the total number of active business owners plummeted by 22%,¹ the "largest drop on record."² By comparison, from the start to end of the Great Recession, the number of business owners decreased by 730,000—only a 5% reduction.³

3. The shutdowns hit business owners of color especially hard: 41% of African-American-owned businesses and 32% of Latinx-owned businesses disappeared between February and April 2020 alone.⁴

4. The cascading waves of closures and layoffs caused the national unemployment rate to soar to 14.7% in April, its highest peak since the Great

¹ Hannah Knowles, *Number of Working Black Business Owners Falls 40 Percent, Far More Than Other Groups Amid Coronavirus*, Wash. Post (May 25, 2020), <https://www.washingtonpost.com/business/2020/05/25/black-minority-business-owners-coronavirus/>.

² Robert W. Fairlie, *The Impact of Covid-19 on Small Business Owners: Evidence of Early-Stage Losses from the April 2020 Current Population Survey 1* (Nat'l Bureau Econ. Research, Working Paper No. 27309 (June 2020) (analyzing data from the Bureau of Labor Statistics Current Population Survey)).

³ *Id.* at 8-9.

⁴ *Id.*

Depression.⁵ Analyses noted that, even for the businesses able to remain afloat in May, thirty million small-business jobs remained vulnerable to layoff or furlough.⁶

5. In the midst of the fallout, Congress stepped in to keep the economy on life support. The CARES Act was enacted on March 27, 2020. The Act, in part, created a \$669 billion small business grant program called the Paycheck Protection Program (the “PPP”).

6. Congress established the PPP to help all eligible businesses and other entities, including sole proprietorships and nonprofits, continue to pay their workers.

7. The CARES Act expressly provides that “any” business that satisfies the specified eligibility criteria relating to size “shall” be eligible for relief under the PPP. 15 U.S.C. § 636(a)(36)(D).

8. However, the Small Business Administration (“SBA”), the agency responsible for administering the program, thereafter created exclusions that bar a broad swath of small-business owners with a history of involvement in the criminal-legal system from PPP funds (the “criminal-record exclusions”). The SBA has continued to shift the terms of the criminal-record exclusions through various, inconsistent policy documents. But throughout it all, the SBA has excluded from the

⁵ Catherine Thorbecke, *US Unemployment Rate Skyrockets to 14.7%, the Worst Since the Great Depression*, ABC News (May 8, 2020), <https://abcnews.go.com/Business/us-economy-lost-205-million-jobs-april-unemployment/story?id=70558779>.

⁶ André Dua et al., *COVID-19’s Effect on Jobs at Small Businesses in the United States*, McKinsey & Co. (May 5, 2020), <https://www.mckinsey.com/industries/social-sector/our-insights/covid-19s-effect-on-jobs-at-small-businesses-in-the-united-states#>.

PPP's promised relief small-business owners who have had past interactions with the criminal-legal system, as well as those they employ. The SBA has not explained why.

9. The criminal-record exclusions are inconsistent with the text and purpose of the CARES Act. They tell a sweeping category of small-business owners across the country that, at a time of acute financial fragility, there is no lifeline for them or their employees.

10. The criminal-record exclusions unlawfully and arbitrarily increase the already considerable barriers to economic success faced by the 1 in 3 working-age Americans with criminal records.⁷ The criminal-record exclusions also harm all Americans who happen to work for a small business whose owner has a covered criminal record.

11. Even in a booming economy, people with criminal records experience unemployment at nearly five times the average rate.⁸ Defying the odds already stacked against them, many start their own small businesses because they are unable to obtain traditional employment, and in turn create jobs for other people with criminal records who have historically been excluded from the workforce.⁹ In the

⁷ Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal History Information Systems, 2012* (2014), <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

⁸ Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, Prison Pol'y Initiative (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html>.

⁹ See generally Joyce Klein & Lavanya Mohan, *Prison to Proprietor: Entrepreneurship as a Re-Entry Strategy*, Aspen Inst. (2016), https://assets.aspeninstitute.org/content/uploads/2016/09/AFN-PrisonToProprietor.pdf?_ga=2.13870965.336196160.1587652799-828052410.1587652799; Nicole Lindahl and Debbie A. Mukamal, *Venturing Beyond the Gates: Facilitating Successful Reentry with*

current economic climate, these individuals and their communities face financial devastation.

12. The SBA's criminal-record exclusions have also exacerbated the pandemic's disproportionate health and economic impacts on communities of color. Due to systemic racism in the criminal-legal system, the criminal-record exclusions fall hardest on minority business owners and workers. Black Americans are 3.6 times more likely than white people to be arrested for marijuana, despite similar usage rates.¹⁰ Black Americans are incarcerated at more than five times the rate of white people;¹¹ one-third of Black American men have a felony conviction.¹² Data suggest that of all U.S. business owners, 2% of white business owners, 15% of Black business owners, and 10% of Latinx business owners have been incarcerated at some point in their lives. *See* Exhibit D (Decl. of Dr. Christopher Wildeman) ¶ 1.

13. The SBA's criminal-record exclusions violate the Administrative Procedure Act ("APA") because they impose additional eligibility requirements for PPP funds contrary to the CARES Act.

Entrepreneurship, Prisoner Reentry Institute, John Jay College of Criminal Justice (2007), <https://files.eric.ed.gov/fulltext/ED540831.pdf>.

¹⁰ Ezekiel Edwards et al., *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* at 29, ACLU (2020), <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

¹¹ *Criminal Justice Fact Sheet*, NAACP, <https://www.naacp.org/criminal-justice-fact-sheet/> (last visited June 15, 2020).

¹² *Race & Justice News: One-Third of Black Men Have Felony Convictions*, Sentencing Project (Oct. 10, 2017), <https://www.sentencingproject.org/news/5593/>.

14. The criminal-record exclusions also violate the APA because they are arbitrary and capricious. The SBA has repeatedly changed the scope of the criminal-record exclusions without explanation or notice. These constant shifts and inconsistencies in criteria have altered the eligibility of business owners as the deadline draws near, depriving them of the opportunity to apply for loans.

15. The criminal-record exclusions cause irreparable harm to Plaintiffs and similarly situated business owners, businesses, and the organizations that devote resources to funding and advising them. As Congress's passage of the PPP reflects, *all* small-business owners urgently need relief right now to keep their businesses afloat and to continue paying their workers.

16. This lawsuit asks the Court to declare unlawful and set aside Defendants' criminal-record exclusions, and to enjoin the Defendants from continuing to bar PPP applicants with criminal records from the critical federal aid that Congress promised.

PARTIES

17. Plaintiff Sekwan Merritt, a resident of Maryland, is the sole owner of Prop Prep Properties LLC, an electrical contracting company doing business as Lightning Electric. He resides at 2123 Brigadiere Boulevard, Odenton, Maryland, 21113, Anne Arundel County.

18. Plaintiff Prop Prep Properties LLC, doing business as Lightning Electric ("Lightning Electric"), is a limited liability company duly organized and authorized to conduct business in the State of Maryland. Lightning Electric does business at 3520 Ailsa Avenue, Baltimore, Maryland, 21214.

19. Plaintiff John D. Garland, a resident of New York, is the majority owner of Sign Me Up Bethpage, Inc., doing business as Fastsigns 2323. He resides at 218-32 99th Avenue, Queens Village, New York, 11429.

20. Plaintiff Sign Me Up Bethpage, Inc., doing business as Fastsigns 2323 (“Fastsigns Bethpage”), is a domestic business corporation duly organized and authorized to conduct business in the State of New York. Fastsigns Bethpage does business at 392 North Wantagh Avenue, Bethpage, New York, 11714.

21. Plaintiff Defy Ventures, Inc. (“Defy”) is a nonprofit organization incorporated in New York, with its main office located at 3550 Wilshire Boulevard, Suite 1550, Los Angeles, California. 90010. Defy’s mission is to use entrepreneurship and employment as tools for currently and formerly incarcerated individuals to address the social problems of mass incarceration and recidivism. Defy has chapters in New York, Northern California, Southern California, Connecticut, and Illinois, and licensed affiliates in Colorado and Washington.

22. Defendant United States Small Business Administration is an independent federal agency created and authorized pursuant to 15 U.S.C. § 633, *et seq.* The SBA maintains a branch location at 100 S. Charles Street #1201, Baltimore, Maryland, 21201. Its headquarters are located at 409 3rd Street, SW, Washington, District of Columbia, 20416.

23. Defendant Jovita Carranza (the “Administrator”) is the Administrator of the SBA, a Cabinet-level position, and is sued in her official capacity. The SBA is

headquartered at 409 3rd Street, SW, Washington, District of Columbia, 20416. Authority to sue the Administrator is granted by 15 U.S.C. § 634(b).

24. Defendant United States Department of the Treasury (“Treasury”) is a department of the executive branch of the United States government headquartered at 1500 Pennsylvania Avenue, NW, Washington, District of Columbia, 20220.

25. Defendant Steven Mnuchin (the “Secretary”) is the Secretary of the United States Department of the Treasury and is sued in his official capacity. The Treasury is headquartered at 1500 Pennsylvania Avenue, NW, Washington, District of Columbia, 20220.

JURISDICTION AND VENUE

26. Jurisdiction is proper in this Court under 28 U.S.C. § 1331. The Court has remedial authority pursuant to 28 U.S.C. § 1361, 28 U.S.C. § 2201, and 5 U.S.C. § 702.

27. Venue is proper pursuant to 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

FACTUAL ALLEGATIONS

I. Congress Enacts the Paycheck Protection Program.

28. On March 13, 2020, President Trump declared the “ongoing Coronavirus Disease 2019 (COVID–19) pandemic is of sufficient severity and magnitude to

warrant an emergency determination” that “an emergency exists nationwide.”¹³

29. On March 27, 2020, Congress passed the CARES Act, allocating \$2 trillion in assistance to individuals and businesses. The Act included direct Economic Impact Payments of up to \$1,200 per American adult and \$367 billion to assist small businesses through the SBA.¹⁴

30. By late March 2020, small businesses were already “scrambling to make payroll, sort out which staff they can keep on—and which they can’t—and figure out some way to keep money coming in.”¹⁵

31. Title I of the CARES Act is entitled “Keeping American Workers Paid and Employed Act.” Pub. L. No. 116-136, 134 Stat. 281, 286 (2020).

32. As part of Title I, Congress created the Paycheck Protection Program. *Id.* § 1102.

33. Although PPP funds are distributed in the form of bank loans, the PPP more closely resembles an emergency grant program: The CARES Act provides that

¹³ Letter from President Donald J. Trump on Emergency Determination Under the Stafford Act (Mar. 13, 2020), <https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act>.

¹⁴ The initial tranche of PPP funding was almost immediately exhausted. Subsequently, on April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. No. 116–139, 134 Stat. 620 (2020)), which appropriated an additional \$310 billion in funding. On June 5, 2020, Congress then passed the Paycheck Protection Program Flexibility Act of 2020 as an amendment to the CARES Act “to allow recipients of loan forgiveness under the paycheck protection program to defer payroll taxes, and for other purposes.” Pub. L. No. 116-142, 134 Stat. 641. Neither piece of legislation altered the provision of the CARES Act that defines eligibility for the PPP.

¹⁵ Kimberly Adams, *Despite Imminent Federal Aid, Small Businesses are Desperate*, MarketPlace (Mar. 27, 2020), <https://www.marketplace.org/2020/03/27/will-covid19-stimulus-package-help-small-businesses/>.

PPP funds will be guaranteed by the SBA and entirely forgiven to the extent that the money is used for certain purposes, including payroll costs, health care benefits, and insurance premiums. 15 U.S.C. § 636(a)(36)(A)(viii). Accordingly, so long as the business spends the funds for those purposes, the “loans” need not be repaid.

34. The provision of the CARES Act that defines eligibility for the PPP is entitled “Increased eligibility for certain small businesses and organizations.” *Id.* § 636(a)(36)(D).

35. Under that heading, the text of the CARES Act unequivocally directs that “[d]uring the covered period, in addition to small business concerns, *any* business concern ... *shall* be eligible to receive a covered loan if the business concern ... employs not more than the greater of (I) 500 employees; or (II) if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern ... operates.” *Id.* § 636(a)(36)(D)(i) (emphasis added).¹⁶

36. The application deadline for PPP funding is June 30, 2020.¹⁷

¹⁶ Under the CARES Act, small business loans were also made available to “individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals.” *Id.* § 636(a)(36)(D)(ii).

¹⁷ See U.S. Senate Committee on Small Business & Entrepreneurship, Paycheck Protection Program FAQs for Small Businesses, https://www.rubio.senate.gov/public/_cache/files/ac3081f6-14ae-4e6f-9197-172ede28badd/71AB6CB05A08E369E0D488A80B3874A5.faqs---paycheck-protection-program-faqs-for-small-businesses.pdf. (“Applicants are eligible to apply for the PPP loan until June 30th, 2020.”); see also Joint Statement by Treasury Secretary Steven T. Mnuchin and SBA Administrator Jovita Carranza Regarding Enactment of the Paycheck Protection Program Flexibility Act, U.S. Dep’t of the Treasury (June 8, 2020) (“June 30, 2020 remains the last date on which a PPP loan application can be approved”); SBA, Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Revisions to First Interim Final Rule, Docket No. SBA-2020-0036 (June 12, 2020), <https://www.sba.gov/sites/default/files>

II. The Small Business Administration Imposes Criminal-Record Exclusions on PPP Eligibility.

37. The CARES Act provides that the PPP shall be administered by the SBA under Section 7(a) of the Small Business Act, *id.* § 636(a), and instructs the SBA to “issue regulations to carry out this title and the amendments made by this title without regard to the notice requirements under section 553(b) of title 5, United States Code” within 15 days. Pub. L. No. 116-136, § 1114, 134 Stat. at 312 (“Emergency Rulemaking Authority”).

38. Since the enactment of the CARES Act, the SBA has issued a series of confusing, contradictory, and continuously shifting eligibility criteria for the PPP far exceeding those exclusive conditions Congress enumerated in the CARES Act.

39. On March 31, 2020, the SBA released a sample application form for PPP funding (“March application form”), which included questions regarding criminal history, to be answered by small-business owners with greater than 20% ownership stakes. The March application form instructed that a “Yes” answer to either of the following questions would mean that the “loan will not be approved”:

Question 5: Are you presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, on probation or parole?

Question 6: Within the last *7 years*, for any felony *or misdemeanor* for a crime against a minor, have you: 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been

/2020-06/PPP-IFR-Revisions-to-First-Interim-Final-Rule_06%2012%2020.pdf (discussing expiration of SBA’s authority to guarantee loans).

placed on any form of parole or probation (including probation before judgment)?¹⁸

40. Notably, the March application form disqualified applicants who had been placed on probation or parole within the last seven years but who had been subsequently discharged.

41. On April 2, 2020, the SBA posted on its website an Interim Final Rule for the PPP. This Interim Final Rule (“April IFR”) was published in the Federal Register on April 15, to “implement the CARES Act.” 85 Fed. Reg. 20,811 (Apr. 15, 2020) (“Business Loan Program Temporary Changes; Paycheck Protection Program”).¹⁹ The April IFR explained that the CARES Act and PPP are designed to

¹⁸ See SBA, Paycheck Protection Program Application Form, SBA Form 2483 (03/20), OMB Control No.: 3245-0407 (Expiration Date: 09/30/2020), https://www.sba.gov/sites/default/files/2020-03/Borrower%20Paycheck%20Protection%20Program%20Application_0.pdf (emphasis added).

¹⁹ SBA has also issued several additional interim final rules on other aspects of the PPP not at issue in this case. See 85 Fed. Reg. 20,817, 20,817 (Apr. 15, 2020) (“supplements the Initial Rule with additional guidance regarding the application of certain affiliate rules”); 85 Fed. Reg. 21,747 (Apr. 20, 2020) (“Additional Eligibility Criteria and Requirements for Certain Pledges of Loans”); 85 Fed. Reg. 23,450 (Apr. 28, 2020) (“Requirements-Promissory Notes, Authorizations, Affiliation, and Eligibility”); 85 Fed. Reg. 23,917 (Apr. 30, 2020) (“Additional Criterion for Seasonal Employers”); 85 Fed. Reg. 26,321 (May 4, 2020) (“Requirements-Disbursements”); 85 Fed. Reg. 26,324 (May 4, 2020) (“Paycheck Protection Program-Requirements-Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders”); 85 Fed. Reg. 27,287 (May 8, 2020) (“Nondiscrimination and Additional Eligibility Criteria”); 85 Fed. Reg. 29,845 (May 19, 2020) (“Extension of Limited Safe Harbor With Respect to Certification Concerning Need for PPP Loan Request”); 85 Fed. Reg. 29,842 (May 19, 2020) (“Paycheck Protection Program-Loan Increases”); 85 Fed. Reg. 29,847 (May 19, 2020) (“Eligibility of Certain Electric Cooperatives”); 85 Fed. Reg. 30,835 (May 21, 2020) (“Treatment of Entities With Foreign Affiliates”); 85 Fed. Reg. 31,357 (May 26, 2020) (“Second Extension of Limited Safe Harbor With Respect to Certification Concerning Need for PPP Loan and Lender Reporting”); 85 Fed. Reg. 33,004 (June 1, 2020) (“Requirements—Loan Forgiveness”), 85 Fed. Reg. 33,010 (June 1, 2020) (“SBA Loan Review Procedures

“provide immediate assistance to individuals, families, and businesses affected by the COVID-19 emergency” and instructed that “[l]enders must comply with the applicable lender obligations set forth” in the IFR. *Id.* at 20,811-12.

42. The April IFR included the following exclusion:

Could I be ineligible even if I meet the eligibility requirements in (a) above?

You are ineligible for a PPP loan if, for example:

...

iii. An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years;²⁰

43. The April IFR contradicted the March application form, imposing a five-year felony ban instead of a seven-year felony or misdemeanor ban.

44. The April IFR also claimed that “[b]usinesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and described further in SBA’s Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2,” referencing an earlier SBA rule and interpreting document that specified businesses ineligible to receive loans under a different SBA loan program. *Id.*²¹ However, those rules nowhere contain the felony ban imposed by the April IFR.

and Related Borrower and Lender Responsibilities”); 85 Fed. Reg. 35550 (June 11, 2020) (“eligibility requirements for certain telephone cooperatives”).

²⁰ 85 Fed. Reg. at 20812.

²¹ That earlier rule excluded “Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude.” *See* 13 C.F.R. § 120.110(n). Pursuant to SBA guidance on that rule, applicants with

45. On April 3, 2020, the same day that the PPP opened for applications,²² the SBA published a new PPP borrower application form (“April application form”). The April application form asked two questions regarding criminal history, with a “Yes” answer to either one resulting in disqualification:

Question: Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?

Question: Within the last 5 years, for any felony, has the Applicant (if an individual) or *any owner* of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?²³

“a deferred prosecution, conditional discharge, order of protection, or on a sex offender registry” were “treated as if the individual is on probation or parole,” and applicants were also excluded if they were “currently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction.” (SOP) 50 10, Subpart B, Chapter 2, at 292-293, <https://www.sba.gov/sites/default/files/2019-02/SOP%2050%2010%205%28K%29%20FINAL%202.15.19%20SECURED%20copy%20paste.pdf>.

²² See Christopher Zara, *Paycheck Protection Program: What Small Businesses Need to Know as SBA Loan Applications go Live*, Fast Company (Apr. 3, 2020).

²³ SBA, Paycheck Protection Program, Borrower Application Form, SBA Form 2483 (04/20) OMB Control No.: 3245-0407 (Expiration Date: 09/30/2020), <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf> (emphasis added).

46. This “snapshot” comes from the April application form:

If questions (5) or (6) are answered “Yes,” the loan will not be approved.

| Question | Yes | No |
|---|--------------------------|--------------------------|
| 5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole? Initial here to confirm your response to question 5 → _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)? Initial here to confirm your response to question 6 → _____ | <input type="checkbox"/> | <input type="checkbox"/> |

47. The April application form conflicted with the April IFR. The April application form described the grounds for criminal history-based disqualification even more broadly than the April IFR.

48. For example, the April application form disqualified anyone who has been *discharged* from probation or parole but was previously placed on probation or parole in the last five years.

49. The April application form also disqualified people who have “pleaded nolo contendere,” or who have been “placed on pretrial diversion” or “placed on ... probation before judgment,” despite the fact that these pleas are entered into without formal test of the validity of the underlying charge, and despite the fact that the very purpose of accepting these dispositions is to *avoid* the consequences of a criminal record.

50. In response to the April IFR and April application form, members of Congress pointed out that the criminal-record exclusions contravene the CARES Act. Lawmakers questioned the SBA’s authority to bar business owners with records from PPP relief under the Act, and several asked Defendants to explain the exclusions.

51. On April 6, 2020, Representative Cedric L. Richmond and ten other members of Congress submitted a letter to Secretary Mnuchin and Administrator Carranza pointing out that “[t]he [criminal-record exclusions] contain[] many restrictions that were not only not included in the CARES Act” but “not intended by Congress at all. Specifically, Congress did not intend for people who have been released from prison and followed the law to start or help start a business to be prevented from getting the capital they need to save it.” Exhibit E.

52. On April 8, Senator Jeffrey A. Merkley submitted a letter to Secretary Mnuchin and Administrator Carranza calling “the breadth of [the criminal-record exclusions] unconscionable, as it punishes individuals who should be innocent until proven guilty and those who have already served their time and, due to the well-known racial disparities in our justice system, disproportionately disqualifies minority-owned businesses.” Exhibit F.

53. On April 30, Senators Rob Portman and Benjamin L. Cardin submitted a letter to Secretary Mnuchin and Administrator Carranza asking the SBA to revise its criminal-record exclusions “so that it properly reflects Congress and the Administration’s support for second chances” and noting that the criminal-record exclusions “will only hurt the economy, and further diminish the workforce and the tax base they generate.” Exhibit G. Senators Portman and Cardin stated that the PPP “was not intended to exclude business owner[s] who have made mistakes, paid their debt, and turned their lives around. Rather, it was intended to provide a bridge to hard-working American small-business owners who are keeping people employed

and supporting the essential services that benefit all of us during this unprecedented crisis.” *Id.*

54. On May 19, Representative Dina Titus and sixteen other members of Congress submitted a letter to the Administrator asserting that “the SBA has failed to provide any sort of reasoning for requiring applicants to indicate whether they have any history of a criminal offense other than a minor vehicle violation.” Exhibit H. The letter demanded that the SBA “issue specific guidance on how criminal history is being used in the distribution of congressionally appropriated assistance.” *Id.* Representative Titus’s letter further stated that “[d]enying assistance to rehabilitated citizens who have served their sentences and contributed to the economy is unjust and harmful to our nation’s recovery from this pandemic.” *Id.*

55. Advocates across the country and political spectrum also voiced opposition to the SBA’s actions. On April 20, 2020, Right on Crime—a “national campaign to promote successful, conservative solutions on American criminal justice policy”²⁴—and eight other groups submitted a letter to Defendants asking the administration to “tailor the Final Interim Rule to reflect common-sense.” Exhibit I. The Council of State Governments Justice Center and a dozen other groups issued a joint statement noting that “The Small Business Administration’s policies regarding people with criminal records go against the intent of the legislation and the Trump

²⁴ *The Conservative Approach To Criminal Justice*, Right on Crime (last visited June 15, 2020), <http://rightoncrime.com>.

administration's ongoing support of second chances for people who have served their time." Exhibit J.

56. During the notice-and-comment period, numerous organizations submitted letters questioning both the legality and the logic of the restrictions. *See, e.g.,* Citizens for Juvenile Justice et al., Re: U.S. Small Business Administration Business Loan Program; Paycheck Protection Program Interim Final Rule, No. SBA-2020-0015, RIN 3245-AH34 (May 15, 2020) ("To exclude a class of business owners or partial owners from the Paycheck Protection simply on the basis of their past involvement with the criminal justice system or unadjudicated allegations concerning their present involvement is not only contrary to law, it is wrong.") (Exhibit K); Collateral Consequences Resource Center et al., Re: U.S. Small Business Administration Business Loan Program; Paycheck Protection Program Interim Final Rule, No. SBA-2020-0015, RIN 3245-AH34 (May 15, 2020) ("SBA's new restrictions on eligibility for its loan programs, which already operate to exclude many people with a record, contravene the intent of the CARES Act, and are inconsistent with SBA's more general mandate of encouraging entrepreneurship and expanding access to employment.") (Exhibit L); Institute for Justice Clinic on Entrepreneurship, Re: U.S. Small Business Administration Business Loan Program; Paycheck Protection Program Interim Final Rule, No. SBA-2020-0015, RIN 3245-AH34 (May 15, 2020) ("the SBA's Interim Final Rule arbitrarily cuts some American businesses off from emergency funding, leaving them to fail despite their importance to the economy. The Rule thwarts the intent and text of the PPP....") (Exhibit M).

57. On June 11, 2020, the SBA issued yet another revised PPP application form, the “Paycheck Protection Program Borrower Application Form Revised June 2020,” SBA Form 2483 (06/20), OMB Control No.: 3245-0407 (Expiration Date: 10/31/2020), https://home.treasury.gov/system/files/136/PPP-Borrower-Application-Form-Revised-June-2020.pdf?utm_medium=email&utm_source=govdelivery (“June 11 application form”). The June 11 application form deleted the exclusion of businesses with an owner who has been placed on pretrial diversion for any felony within the last five years, but it left the remaining exclusions intact.

58. On the afternoon of Friday, June 12, 2020—days before the PPP’s June 30 application deadline—the SBA announced a new Interim Final Rule on its website. *See* SBA, Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Revisions to First Interim Final Rule, Docket No. SBA-2020-0036, at 5 (June 12, 2020), https://www.sba.gov/sites/default/files/2020-06/PPP-IFR-Revisions-to-First-Interim-Final-Rule_06%2012%2020.pdf (“June IFR”) (Exhibit N).

59. The June IFR again modified this exclusion:

You are ineligible for a PPP loan if, for example:

* * *

iii. An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year;

60. The June IFR left the remaining exclusions intact.

61. Although the SBA never explained the basis for its felony exclusion in the first place, it now stated that “[a]fter further consideration, the Administrator, in consultation with the Secretary of the Treasury (the Secretary), has determined that a shorter timeframe for felonies that do not involve fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance *is more consistent with Congressional intent* to provide relief to small businesses and also promotes the important policies underlying the First Step Act of 2018 (Pub. L. 115-391).” June IFR at 5 (emphasis added).

62. That same day, the SBA also published another new “Paycheck Protection Program Borrower Application Form,” OMB Control No.: 3245-0407 (Expiration Date: 10/31/2020) (“June 12 application form”) (Exhibit O). The following is a “snapshot” of the relevant questions on the June application form:

If questions (5) or (6) are answered “Yes,” the loan will not be approved.

| Question | Yes | No |
|--|--------------------------|--------------------------|
| 5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole? Initial here to confirm your response to question 5 → _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Within the last 5 years, for any felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance, or within the last year, for any other felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; or 4) been placed on any form of parole or probation (including probation before judgment)? Initial here to confirm your response to question 6 → _____ | <input type="checkbox"/> | <input type="checkbox"/> |

63. The June 12 application form left in place the exclusions imposed by the April application form regarding nolo contendere and probation before judgment records, despite the fact that those exclusions appeared nowhere in either the April IFR or the June IFR.

64. The June IFR stated that it will not be effective until its “date of filing at the office of the federal register.” June IFR at 1 (original capitalization omitted).

65. In these unprecedented times, the SBA has taken Congress’s straightforward mandate to administer the PPP to sustain small businesses—and the workers they employ—and added unnecessary, confusing, inconsistent, unexplained, and shifting exclusions of small-business owners who have had contact with the criminal-legal system.

66. To date, Defendants have not explained the basis or logic of the criminal-record exclusions, despite repeated requests to do so—including by members of Congress.

67. To date, Defendants have not identified any nexus between applicants’ criminal history and the reason for their disqualification from PPP funds.

68. Because they are contrary to the plain text of the CARES Act and are arbitrary and capricious, the criminal-record exclusions violate the APA. They also cause irreparable harm to otherwise eligible applicants whose businesses have been impacted by COVID-19, illegally barring them from critical federal aid. The criminal-record exclusions likewise harm the employees of those businesses and the organizations who devote resources to funding and advising them.

III. The Criminal-Record Exclusions Harm Plaintiffs.

a. Sekwan Merritt and Lightning Electric.

69. Sekwan Merritt owns Lightning Electric, an electrical contracting company licensed to provide electrical wiring services in seven Maryland counties.

70. Mr. Merritt is also a restorative justice advocate. In 2017, he testified on Capitol Hill regarding the Pretrial Integrity and Safety Act.²⁵ He discussed how the jail and cash bail system impacts people of color, and how facilities can increase rehabilitative resources to stop the revolving door of local jails. Mr. Merritt has spoken before the Baltimore City Council and at universities on topics related to the criminal-legal system.

71. Mr. Merritt returned home from prison in 2017 and is currently on parole. He pleaded guilty to non-violent drug offenses in 2012. During his five years in prison, he enrolled in an education partnership run by a local Maryland college, and he earned 40 credits toward his Bachelor's degree.²⁶ He also continued to learn about electrical work. He created business plans for starting his own company.

72. Mr. Merritt founded his company in October 2017. Lightning Electric serves both residential and commercial clients, providing installation of low and high-voltage electrical wiring.

73. Mr. Merritt has used Lightning Electric to create economic opportunities for members of his community who are facing barriers to employment. Of the five contracted electricians who work for Lightning Electric, four are formerly incarcerated individuals. Mr. Merritt provides his workers with opportunities to

²⁵ Shoshana Weissmann, *Locked Up Without Conviction: Pretrial Integrity and Safety Act, Strategies for Public Safety*, R Street (Nov. 5, 2017), <https://www.rstreet.org/2017/11/05/locked-up-without-conviction-pretrial-integrity-and-safety-act-strategies-for-public-safety/>.

²⁶ Danielle Douglas-Gabriel, *12,000 Inmates to Receive Pell Grants to Take College Classes*, Wash. Post (June 24, 2016), <https://www.washingtonpost.com/news/grade-point/wp/2016/06/24/12000-inmates-to-receive-pell-grants-to-take-college-classes/>.

learn about every aspect of the contracting business, including estimating costs for projects and material logistics. His goal is that his workers learn the skills they need to become entrepreneurs in their own right.

74. Mr. Merritt is proud of his success as a business owner in the electrical contracting field. He hopes to provide electrical contracting in underserved communities, to set an example for the next generation of minority contractors and, in particular, to provide opportunity and hope for incarcerated individuals and those returning home from prison.

75. On March 5, 2020, Maryland Governor Larry Hogan declared a state of emergency in response to the novel coronavirus.²⁷ On March 23, Governor Hogan issued an order closing all non-essential business in the state.²⁸ On March 30, he issued a stay-at-home order and directed Marylanders to leave their homes only for an essential reason.

76. Businesses across the state closed their doors, and unemployment claims spiked to record highs as Marylanders lost their jobs. By May 28, more than 660,000 people in Maryland had filed for unemployment. The state's unemployment rate soared to 9.9%.²⁹

²⁷ Maryland, Proclamation: *Declaration of State of Emergency of Catastrophic Health Emergency - COVID-19* (Mar. 5, 2020), <https://governor.maryland.gov/wp-content/uploads/2020/03/Proclamation-COVID-19.pdf>.

²⁸ Maryland, Order No. 20-03-23-01 (Mar. 23, 2020), <https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-THIRD-AMENDED-3.23.20.pdf>.

²⁹ Jessica Iannetta, *New Md. Unemployment Claims Hold Steady After Weeks of Dramatic Swings*, Balt. Bus. J. (May 28, 2020), <https://www.bizjournals.com/baltimore/news/2020/05/28/maryland-unemployment-claims-pandemic-hold->

77. Lightning Electric was forced to shut down operations almost completely in March as a result of the coronavirus and Governor Hogan's orders. During the time that the stay-at-home order was in place, Mr. Merritt was unable to pay the electricians working for Lightning Electric. While the company received jobs from customers intermittently, the work coming in was not nearly enough to keep all of Lightning Electric's workers busy at their pre-coronavirus capacity.

78. Mr. Merritt applied for PPP funds on April 15, 2020. He used the online portal of his bank, Wells Fargo, to fill out the application, which tracked the SBA's mandated language.

79. Specifically, the application form contained two questions regarding criminal history. The first asked:

Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation, or parole?

80. The second question asked:

Within the last five years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?

81. Because Mr. Merritt is on parole, he answered "yes" to both questions.

steady.html#:~:text=Since%20the%20pandemic%20began%2C%20more,the%20state%20lost%20349%2C300%20jobs.

82. Immediately upon submission of the application, a screen popped up stating: “Based on the answers provided, your application cannot be processed at this time.”

83. Had Mr. Merritt received the PPP funding he sought, he intended to use it to pay Lightning Electric’s workers when the company’s operations were almost fully shut and the electricians unable to work. He also would have used it to pay the costs essential for running his business, including general liability insurance, which Lightning Electric is required to maintain to be eligible for certain types of contracts.

84. While Maryland has recently begun to open in stages, and Lightning Electric has some more work slowly coming in, the company’s finances remain highly precarious. The two contracts that Lightning Electric secured in early 2020 will proceed, but on a much longer timeframe due to strict restrictions on how many people can be present at the job sites at one time. As a result, Lightning Electric must wait longer to get paid.

85. Despite the significant decrease in work, Lightning Electric continues to have approximately \$9,000 in biweekly payroll expenses. Mr. Merritt desperately wants to keep all the electricians on his payroll, because his workers are important to him. Maintaining the company’s team of electricians is critical to the business’s ongoing survival because it allows the company to preserve its reputation and customer relationships.

86. Lightning Electric also has other overhead expenses, including insurance and advertising costs.

87. Mr. Merritt has been pouring his own savings, as well as money from his family, into Lightning Electric to keep it afloat. He estimates that, in the past months, he has cobbled together approximately \$30,000 in savings and small familial gifts and loans to help the company survive in the short term.

88. Mr. Merritt is constantly worried about funding for his company and is in dire need of financial assistance. Without an influx of cash, there is a substantial risk that Lightning Electric might not survive this time of intense economic distress.

b. John D. Garland and Fastsigns Bethpage.

89. John D. Garland is the owner and President of Fastsigns Bethpage, a franchise of Fastsigns Inc., a company providing sign, business card, letter, and other graphic design services for commercial and residential uses. Fastsigns Bethpage employs three people, including Mr. Garland, as full-time, salaried employees.

90. Mr. Garland has spent over thirteen years building his graphic design business, which he first started in 2007 from a small shop in Bronx, New York.

91. Mr. Garland was incarcerated from 1987 to 2003. While incarcerated, he learned graphic design and commercial printing.

92. Mr. Garland had difficulty obtaining employment after his 2003 release. As a result, he decided to start his own business for graphic design and printing, called ClixClix Media Group, LLC.

93. In 2018, Mr. Garland entered into business with Sign Me Up, Inc., a sign-making and graphic design company. He became the majority owner of a Sign Me Up location in Bethpage, New York, and the Vice President and 15% owner of a

Sign Me Up location in West Babylon, New York. In 2019, Fastsigns International, Inc. acquired Sign Me Up, and the Bethpage and West Babylon Sign Me Up locations became Fastsigns locations.

94. Mr. Garland is committed to assisting people who, like him, have had difficult upbringings and experience with the criminal-legal system. In 2019, he started a partnership with the United Way to train and eventually employ thirteen young people from troubled backgrounds. Mr. Garland intends to expand the program to the formerly incarcerated and veterans. He also partners with New York State in a program to assist youths with autism.

95. Mr. Garland contributes to the Bethpage community, as well, including by donating signs to local schools for their graduations and providing masks to senior citizens during the COVID-19 pandemic.

96. In October 2019, after a domestic argument with his wife, Mr. Garland was charged with a domestic violence offense. He denied all of the allegations, and in December 2019, the case was adjourned in contemplation of dismissal, with a limited order of protection remaining entered against him.

97. In December 2019, Mr. Garland was charged with petit larceny, after his wife alleged that he had moved her personal property from one location to another in their home. Mr. Garland was also charged with a violation of the order of protection as a result of this offense. In February 2020, Mr. Garland appeared in court and pleaded not guilty. The case was adjourned for him to locate legal counsel. In the

meantime, the New York State courts closed a result of COVID-19, and thus the unproven charges against Mr. Garland remain pending.

98. On March 7, 2020, New York Governor Andrew Cuomo declared a state of emergency in response to the coronavirus. On March 20, Governor Cuomo issued an order closing all non-essential businesses in the state and prohibited all non-essential gatherings of individuals of any size, effective March 22.

99. Businesses across the state closed their doors, and, as in Maryland, unemployment claims in New York spiked to record highs. Between mid-March and June 2020, over 2.6 million New Yorkers filed for unemployment, and the unemployment rate soared to 14.5%.³⁰

100. Fastsigns Bethpage was shut down initially. It then reopened as an “essential business.” Prior to the pandemic, Fastsigns Bethpage primarily engaged other businesses as clients. With so many businesses closed, Fastsigns Bethpage’s revenue thus dropped dramatically. Mr. Garland has been unable to pay his employees, and he has fallen behind on his rent and utility bills.

101. On April 10, 2020, Mr. Garland and his business partner began filling out an application for PPP funding. Mr. Garland then saw Question No. 5 on the form, excerpted in paragraph 46 above, and the statement immediately above those questions, which read: “If questions (5) or (6) are answered ‘Yes,’ the loan will not be approved.” Mr. Garland did not complete the application due to the pending charge

³⁰ Michelle Breidenbach, *New NYS Unemployment Claims Reach 2.6M Since March*, Syracuse (June 11, 2020), <https://www.syracuse.com/coronavirus/2020/06/new-nys-unemployment-claims-reach-26m-since-march.html>.

against him. He followed up with his bank, Chase, to confirm that he was ineligible. Chase confirmed that Mr. Garland was excluded from the PPP under the SBA's directives based on his pending charge.

102. Mr. Garland and his business partners had carefully determined the intended uses to which they would put the \$100,000 in PPP funding they sought. They planned to use the funds for payroll costs, rent, utilities, and other essential expenses.

103. New York is presently in the early stages of re-opening, but Fastsigns Bethpage's commercial business remains slow to non-existent. Mr. Garland has worked diligently to keep the business afloat, including by pivoting his business to serve individual customers and residences (instead of other businesses), for example by printing and selling graduation lawn signs. But, still without assistance from the PPP, Fastsigns Bethpage is thousands of dollars behind on rent and utilities, and Mr. Garland has been unable to take a paycheck for some time.

104. Based on its growing rent arrears and limited income, there is a real risk that Fastsigns Bethpage will not survive the economic crisis brought about by the COVID-19 pandemic.

c. Defy Ventures, Inc.

105. Defy Ventures, Inc. ("Defy") is a nonprofit organization founded in 2010 with chapters in the New York Tri-State area (New York, New Jersey, Connecticut), Northern California, Southern California, and Illinois. Defy also has licensed affiliates in Colorado and Washington.

106. Defy’s mission is to use entrepreneurship and employment as tools for currently and formerly incarcerated individuals to address the social problems of mass incarceration and recidivism. Defy’s ultimate goal is for its members and graduates to achieve economic independence so that they may have a successful reentry after prison. Defy believes that individuals returning home from prison deserve a true second chance, or, in many cases, a “legitimate first chance,” and that an arrest or conviction record should not be a lifetime punishment.

107. To carry out its mission, Defy has established training programs both inside and outside of prisons. These programs include “the CEO of Your New Life” (“CEO YNL”) for individuals who are currently in prison or transitional facilities, as well as “Entrepreneur Bootcamp” for individuals who have returned home from prison and have stable housing. Both programs include six to eight months of coursework focused on reentry planning, employment readiness, personal development, and entrepreneurship.

108. CEO YNL is delivered through textbooks, DVDs, in-person instruction and facilitated discussion groups. Volunteers—many from the business community—support the enrolled “entrepreneurs-in-training” through in-person coaching events. Entrepreneur Bootcamp is an entry point to Defy’s entrepreneurship pathway for those who did not complete CEO YNL while incarcerated. It is offered through self-directed online courses.

109. Graduates of CEO YNL or Entrepreneur Bootcamp are eligible to apply to Defy’s “Business Incubator” program. This program includes advanced coursework

in entrepreneurship and business management. Defy also provides training on the process of incorporating, launching, and growing new businesses.

110. It typically takes entrepreneurs-in-training six to eighteen months to launch a business. Defy works with these individuals for the entire period.

111. Defy also runs alumni programs and keeps in touch with its graduates. The “Defy Entrepreneurship Network” is a long-term supportive network for entrepreneurs who have successfully launched businesses. Members of this network are invited to quarterly networking meetings or business workshops; are paired with an executive mentor to support their business, if they desire; and have the opportunity to be featured on the Defy website or newsletter.

112. In its ten years of operation, Defy has helped formerly incarcerated individuals launch over 140 small businesses. It has worked with over 5,200 entrepreneurs-in-training. The vast majority of Defy’s entrepreneurs-in-training have been people of color, reflective of the prison population in the United States.

113. Defy has proven results. Based on Defy’s analysis, compared to a nationwide one-year recidivism rate of approximately 30%, the recidivism rate of Defy’s graduates is less than 8%.

114. The criminal-record exclusions have frustrated Defy’s mission and hindered its operations.

115. Like businesses across the country, small businesses run by Defy graduates have been experiencing severe economic distress from the COVID-related shutdowns.

116. When they learned about the PPP's exclusion of individuals with arrest and conviction records, small-business-owner graduates of Defy's programs, as well as small-business owners who are not Defy graduates, sought advice and help from Defy.

117. These individuals were in dire circumstances. Due to lack of funds, their businesses were forced to lay off workers, go into arrears, and, in some cases, shut down. Defy graduates typically own businesses operating in the service industry, because these require less start-up capital. These businesses, like the service industry at large, were especially hard-hit by COVID-19.

118. The criminal-record exclusions imperil those who seek Defy's help and frustrate Defy's mission. Defy's organizing purpose is to use entrepreneurship and employment tools to provide economic security and successful reentry for formerly incarcerated individuals, and to help formerly incarcerated individuals have a real second chance.

119. The criminal-record exclusions made it necessary for Defy to take action to try to help its graduates save their businesses and continue to pay their workers during the crisis.

120. President and CEO of Defy, Andrew Glazier, together with Defy's staff, devoted their limited resources to understanding the SBA's changing rules and application forms, so that they could provide advice. They found Questions 5 and 6 on the PPP application form to be highly confusing and unclear. But Defy staff know that the stakes for providing the correct advice are high: an inadvertently incorrect

answer could potentially amount to a violation of the terms of probation or parole, or expose Defy's graduates to other liability. As a result, Defy staff poured hours into trying to parse the SBA's conflicting and confusing directives.

121. As the SBA changed its regulations and application forms, Defy's graduates became even more confused about whether they might be eligible for PPP funds. Defy staff needed to expend yet more time and resources to understand these conflicting rules and to try to provide answers to those in need who have continued to turn to Defy for advice.

122. Defy staff, including the CEO, the CFO, and the Director of Development and Marketing, have also had to spend their time, energy, and limited resources finding alternative funding sources for graduates' businesses, because they were wrongfully excluded from the PPP. Defy's work in this regard has included reaching out to community lenders, exploring the option of creating a separate fund for Defy graduates, working with graduates to start and publicize GoFundMe pages, and researching other funding resources.

123. The PPP criminal-record exclusions have thus caused a significant diversion of Defy's resources. Had the SBA not excluded its graduates, Defy would have instead devoted this time and energy to its previously planned programming and training activities.

124. Plaintiffs continue to suffer under the SBA's unlawful and ever-changing criminal-record exclusions.

CAUSES OF ACTION

COUNT I

Administrative Procedure Act

The Criminal-Record Exclusions Exceed Statutory Authority and Are Not in Accordance with Law (5 U.S.C. § 706(2)(A), (C))

125. Plaintiffs repeat and incorporate by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

126. Under the APA, a court shall “hold unlawful and set aside agency action, findings, and conclusions found to be ... not in accordance with law” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A), (C).

127. The criminal-record exclusions constitute final agency action subject to review under the APA.

128. The SBA exceeded its statutory authority, and acted not in accordance with law, in violation of the APA, by promulgating the criminal-record exclusions. These exclusions add eligibility requirements for PPP funds based on a business owner’s criminal record. These eligibility conditions are contrary to the CARES Act. Congress mandated that “any” business that satisfies the criteria Congress specified “shall” be eligible, not merely a subset of those businesses.

129. Defendants’ violation of the APA causes ongoing and irreparable harm to Plaintiffs and similarly situated business owners, businesses, and the organizations who devote resources to funding and advising them.

130. Plaintiffs have no adequate remedy at law.

COUNT II
Administrative Procedure Act
The Criminal-Record Exclusions are Arbitrary, Capricious,
and an Abuse of Discretion
(5 U.S.C. § 706(2)(A))

131. Plaintiffs repeat and incorporate by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

132. The APA instructs courts to “hold unlawful and set aside agency action” that is “arbitrary, capricious, [and] an abuse of discretion.” 5 U.S.C. § 706(2)(A).

133. The criminal-record exclusions constitute final agency action subject to review under the Administrative Procedure Act.

134. The criminal-record exclusions preventing business owners with criminal records from accessing PPP funds are arbitrary, capricious, and an abuse of discretion because they are contrary to the purpose of the CARES Act, which is to provide emergency support to American workers facing loss of income.

135. Defendants failed to furnish any explanation for the criminal-record exclusions and failed to explain the inconsistencies between differing, inconsistent versions of these exclusions.

136. Defendants’ violation of the APA causes ongoing and irreparable harm to Plaintiffs and similarly situated business owners, and to those who work for them and devote resources to advising them.

137. Plaintiffs have no adequate remedy at law.

COUNT III
Administrative Procedure Act
The Criminal-Record Exclusions Were Adopted without
Observance of Procedure Required by Law
(5 U.S.C. § 706(2)(D))

138. Plaintiffs repeat and incorporate by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

139. Under the APA, a court shall “hold unlawful and set aside agency action, findings, and conclusions found to be without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

140. In issuing substantive rules, federal agencies are required to follow the notice and comment process set forth in the APA, 5 U.S.C. § 553(b).

141. Although the SBA is authorized to “dispense with the 30-day delayed effective date provided in the Administrative Procedure Act” and issue rules without “*advance* notice and public comment,” 85 Fed. Reg. at 20,811 (emphasis added), the agency may not dispense with the notice and comment process entirely; interim final rules must be published in the Federal Register to give the public notice and a chance to comment even when the rule may go into effect contemporaneously.

142. The official application forms for PPP funds issued by the SBA exclude categories of business owners from applying beyond the categories of business owners who were identified in the April and June IFRs.

143. By changing who was eligible for PPP funds by application form, and without providing notice or the opportunity to comment through publication in the

federal register, Defendants issued substantive rules not in accordance with procedures required by law.

144. Defendants' violation of the APA causes ongoing and irreparable harm to Plaintiffs and similarly situated business owners, and to those who work for them and devote resources to advising them.

145. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully that this Court enter judgment in their favor and grant the following relief:

A. Declare the criminal-record exclusions unlawful pursuant to 5 U.S.C. § 706(2);

B. Preliminarily and permanently enjoin the SBA and the Treasury and its officers, employees, and agents from applying and enforcing the criminal-record exclusions contained in the SBA IFRs and application forms;

C. Order the SBA to extend the PPP application deadline, which is currently set to close on June 30, 2020, by 21 days, to July 21, 2020, for those applicants unlawfully excluded under the challenged criminal-record exclusions;

D. Order that the SBA Administrator and the Treasury Secretary not authorize, guaranty, or disburse funds appropriated for loans under the PPP without reserving sufficient funds to cover applicants wrongfully excluded under the challenged terms of the IFR and the application form, in an amount to be determined based on SBA data and submitted by the SBA to this Court for approval;

E. Vacate and set aside Part III.2.b.iii. of the April Interim Final Rule (85 Fed. Reg. at 20,811, 20,812, as modified by the *Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Revisions to First Interim Final Rule* Docket No. SBA-2020-0036 (June 12, 2020));

F. Enter such other declaratory and/or injunctive relief as Plaintiffs may specifically request hereafter;

G. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated with this litigation; and

H. Award any other relief the Court deems just and proper.

Dated: June 16 , 2020

Respectfully submitted,

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Dery Ventures, Inc.; Sekwan Merritt; Prop Prep Properties, LLC d/b/a Lightning Electric; John Garland; Sign Me Up Bethpage Inc. d/b/a Fastsigns 2323

(b) County of Residence of First Listed Plaintiff **Los Angeles**

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kali N. Bracey, Jenner & Block, 1099 New York Ave. NW 900, Washington, DC 20001, (202) 639-6000

DEFENDANTS

U.S. Small Business Administration; Jovita Carranza; U.S. Department of the Treasury; Steven Mnuchin

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|---|---|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Administrative Procedure Act

Brief description of cause:

Challenge to criminal-record exclusions from the Paycheck Protection Program under the CARES ACT

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE **George L. Russell, III**

DOCKET NUMBER **20-cv-1736**

DATE

06/16/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Kali N. Bracey

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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FOR DECLARATORY AND INJUNCTIVE RELIEF**

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Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

DEFY VENTURES, INC., *et al.*,

Plaintiffs,

v.

**U.S. SMALL BUSINESS
ADMINISTRATION, *et al.***

Defendants.

CASE NO.:

**DECLARATION OF ANDREW GLAZIER IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

I, Andrew Glazier, declare:

1. I am over the age of eighteen. I have personal knowledge of the facts stated herein and am competent to testify to them.

Defy Ventures

2. I am the President and CEO of Defy Ventures, Inc. ("Defy"), a nonprofit organization founded in 2010. I first joined Defy Ventures as the Executive Director of the Defy Southern California chapter in 2017. I then served as the National Chief Program Officer for Defy's national organization, and assumed the President role in the spring of 2018. I am based in Defy's main offices in Los Angeles, with all of Defy's chapters under my management.

3. Defy's mission is to use entrepreneurship and employment as tools for currently and formerly incarcerated individuals to address the social problems of mass incarceration and recidivism. Our ultimate goal is for our members and graduates to achieve economic independence so that they may have a successful reentry after prison. Defy Ventures works to

change the hearts and minds of the business community in support of a common thesis that people with a criminal history deserve a fair chance to reenter society and fulfill their potential.

4. Defy Ventures was originally founded in New York City, and the organization remains incorporated there. Defy now has chapters in New York Tri-State area (covering NY, CT and NJ), Northern California, Southern California, and Illinois. The organization (inclusive of these chapters) has thirteen full-time staff members, five of whom are located in Defy's main Los Angeles office. The Illinois chapter was started just last month.

5. Defy also has licensed affiliates in Colorado and Washington. The Colorado location has three employees, and the Washington location, which started in late 2018, has one employee.

Defy's Programs

6. In order to accomplish its mission, Defy Ventures has training programs both inside and outside of prisons.

7. Our program model is not static; we frequently iterate and revise our programs in response to data and outcomes to better serve our entrepreneurs-in-training. However, the following is a general description of Defy's core programs.

8. The CEO of Your New Life (CEO YNL) is a holistic entrepreneurship, career readiness and personal development program run by Defy Ventures for individuals who are currently in prison or transitional facilities. We call our participants "Entrepreneurs-in-Training." This program includes six to eight months of coursework and is delivered through textbooks, DVDs, in person instruction and facilitated discussion groups. Volunteers, many from the business community, support the Entrepreneurs-in-Training through in-person coaching events.

9. The Entrepreneur Bootcamp is similar to the program we run in prisons and transitional facilities, but it is primarily designed as an entry point to our entrepreneurship pathway for those who did not complete CEO YNL while incarcerated, have returned home from prison and already have stable housing and employment. The program is offered through self-directed

online courses in which Entrepreneurs-in-Training are responsible for reading chapter contents, watching supplemental videos, responding to discussion questions and uploading deliverables.

10. Defy recognizes the innate entrepreneurial talent in our entrepreneurs-in-training and the powerful virtuous cycle that formerly incarcerated individuals can create when they are given the opportunity to own and operate their own business. After completing CEO YNL, being released from prison, and obtaining stable housing, or after completing Entrepreneur Bootcamp, entrepreneurs-in-training are eligible to apply to our Business Incubator program, which includes advanced coursework in entrepreneurship and business management. As part of the application process, entrepreneurs-in-training must successfully pitch their business ideas to an admissions panel.

11. Through Business Incubator, we support Entrepreneurs-in-Training through the process of incorporating, launching, and growing new businesses. The program provides additional curriculum and coaching regarding the steps to launching a business. As part of this program, each Defy student is paired with a mentor in the business community for weekly or biweekly coaching and feedback. Entrepreneurs-in-Training also participate in monthly meetings with other entrepreneurs-in-training, allowing them to share their business successes and challenges and receive peer feedback.

12. It typically takes Entrepreneurs-in-Training 6-18 months to launch a business. Defy works with them for this entire time, and then continues its relationship once the entrepreneurs become graduates of our programs. I would estimate that, of Defy's entrepreneurs-in-training who are released from prison and join our post-release program, around 10% pursue entrepreneurship and creation of a business.

13. Financing is critical to the success of our graduates' businesses. Typically, Defy tries to raise money in order to be able to provide our graduates with some seed money for their businesses. At present, I am in the midst of such a fundraising effort. We also speak with community lenders who are willing to give unsecured loans to our graduates.

14. Defy also runs alumni programs and keeps in touch with its graduates. The Defy Entrepreneurship Network is a long-term supportive network for entrepreneurs who have successfully launched businesses. Members of this network are invited to quarterly networking meetings or business workshops; are paired with an executive mentor to support their business, if they desire; and have the opportunity to be featured on the Defy website or newsletter.

15. We have also surveyed our graduates regarding the success of their businesses, and Defy actively seeks to use the services offered by our graduates. For example, a Defy graduate in Northern California owns a trade show business that sells banners, swag, and other trade show items. Defy has purchased his goods. Further, when Defy held a fundraiser in New York City, we served cupcakes provided by our graduate Chef Fresh.

16. Defy has worked with over 5200 entrepreneurs-in-training since its inception ten years ago. The large majority of our entrepreneurs-in-training have been people of color; this racial makeup is reflective of the prison population in the United States.

17. In its ten years of operation, Defy has helped formerly incarcerated individuals launch over 140 small businesses. The businesses that are started by Defy graduates are typically in the service industry, because they require relatively less start-up money, and they have relatively low overhead and inventory costs at startup. For example, our graduates have started janitorial services, fitness, plumbing, and food and art businesses. The largest business started by one of our graduates is CONBODY, a fitness bootcamp with approximately six employees and two gyms in New York and London.

18. Many of the businesses started by our graduates go on to employ other formerly incarcerated individuals. For example, CONBODY makes a point of hiring the formerly incarcerated as trainers.

19. Defy Ventures has proven results. In contrast to the nationwide one-year recidivism rate, which according to some analyses is approximately 30%, the recidivism rate of the graduates of Defy Ventures is less than 8%.

The SBA's PPP Rule

20. I first learned of the exclusions of individuals with arrest and conviction records from the Small Business Administration (SBA)'s Paycheck Protection Program (PPP) in mid-April 2020, when graduates of Defy's programs brought it to my attention.

21. The graduates of the program explained their concern that they were ineligible for the PPP program. They asked me and other staff members at Defy whether we had any way to help them, and whether we had any ideas on how they could secure PPP or other funding during the coronavirus-related shutdowns. We also heard similar questions from formerly incarcerated businesses owners who were not even graduates of our program, but reached out to us because they were aware of our program.

22. The businesses run by our graduates were experiencing severe economic distress from the covid-related shutdowns. One of our graduates had to lay off half of his workers. Another graduate, who runs a tailoring business, was in arrears on payments related to his store.

23. Our first step was to try and understand the SBA's rules and application form. I and Defy staff looked at an online version of the application form. We soon realized that, as soon as you hit "yes" to Question 5 or Question 6, each of which ask about criminal history, the answer on the form became grayed-out, meaning that an applicant could not proceed with the application.

24. As a result of this automatic exclusion, we quickly realized there was nothing Defy or our graduates could do to provide additional information or context to the SBA about an applicant's criminal history. Three or four of our graduates were most obviously impacted by this exclusion because their felony convictions were within the last five years.

25. We also noticed that Questions 5 and 6 on the PPP application form were worded in a highly confusing manner. A few of Defy's graduates turned to us for help because they did not understand exactly what the questions were asking. I found it very difficult and, frankly, scary to advise graduates regarding their answers on the application form, because an incorrect answer

could potentially amount to a violation of the terms of probation or parole, or expose them to other liability.

26. As my staff and I continued to research and follow the evolution of the rules governing the PPP, we noticed that the SBA had changed its regulations a number of times. These changes added another layer of confusion for our graduates. For example, I learned only recently that the PPP had again changed its rule regarding individuals with records in June. None of my graduates, that I know of, were aware of this change.

27. I advised our graduates to take a conservative and careful approach to the application. However, some of our graduates were deterred from applying for PPP funding altogether due to the confusing nature of the questions, the changing rules, and the high stakes involved in answering correctly, in particular for them as formerly incarcerated individuals.

28. A few of my staff members, including the Senior Post-Release Manager, Director of Development and Marketing, and one of our graduates and I next turned to locating alternate funding sources for our graduates who were excluded from the PPP program and whose businesses were in distress. We researched, brainstormed, and discussed multiple options for such potential funding sources.

29. One funding option, which we ultimately had to rule out, was for Defy to create and administer a separate fund for our graduates. Three or four staff members and I looked into the logistics of this possibility; Defy's Director of Development and Marketing and I called some of our contacts to discuss the potential logistics. We also held a phone conference with community lenders to see if they had input on the idea or could help us work on it. One or two of Defy's graduates had phone conversations with funders. Unfortunately, after this research, we had to conclude that it was not feasible for Defy to serve a banking role that banks, lenders, and the government are supposed to fill (and were in fact filling for non-excluded small business owners).

30. We moved on to other options for locating funding sources. We worked with graduates to start and publicize their GoFundMe pages. These GoFundMe efforts raised a few thousand dollars for a few of our graduates. One of our graduates runs a tailoring business, and we helped him raise \$5,000 to launch a line of masks to help bring in business for him.

31. We spoke with our contacts in the donor community in an effort to direct our graduates to sources of funding. For example, I found out that Verizon had sponsored a fund to which graduates could apply. We also researched funding resources and gave our graduates referrals. These funding sources offered up to ten thousand dollars — not as much money as our graduates could potentially have been able to obtain through the PPP program.

32. In my estimation, our organization has spent approximately thirty hours minimum on the above activities since mid-April when we first learned of the PPP exclusions. The PPP exclusions caused a significant diversion of our resources: had the SBA not excluded our graduates, we would have instead devoted this time and energy to our previously-planned programming and training activities.


33. The PPP's criminal-history related exclusions have impeded the ability of Defy Ventures to accomplish its mission. First, Defy cannot accomplish its goal of using entrepreneurship and employment as a tool to provide economic security and successful reentry for formerly incarcerated individuals if those individuals, and their employees, are shut out from financing for their businesses. Due to discrimination against formerly incarcerated individuals that is already present in many spheres including lending and employment, it is already difficult for Defy's graduates to obtain the money they need to succeed. During a time of nationwide economic crisis, it is particularly critical for Defy's graduates to have access to emergency financing to keep their businesses afloat.

34. Second, Defy Ventures believes that formerly incarcerated individuals are entitled to a real second chance – or, as the case may be, a legitimate first chance. By excluding our graduates from forgivable loans during a time of intense economic fragility, the SBA's exclusions reinforce

the incorrect, dangerous, and recidivism-increasing idea that an individual's criminal history should follow them for the rest of their life and hold them back from economic success.

I, Andrew Glazier, pursuant to 28 U.S.C § 1746 and subject to the penalties of perjury, declare the following is true and correct.

This Declaration was signed by me on June 15, 2020, at Los Angeles, CA.



Andrew Glazier

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

DEFY VENTURES, INC., *et al.*,

Plaintiffs,

v.

**U.S. SMALL BUSINESS
ADMINISTRATION, *et al.***

Defendants.

CASE NO.:

**DECLARATION OF SEKWAN MERRITT IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

I, Sekwan Merritt, declare:

1. I am over the age of eighteen. I have personal knowledge of the facts stated herein and am competent to testify to them.
2. I am a Black man, a small business owner, and a restorative justice advocate. I am also a formerly incarcerated person.
3. I am a resident of Maryland.
4. In October 2017, I started my own electrical contracting business. It is a limited liability company named Prop Prep Properties LLC, doing business as Lightning Electric. It is duly organized under the laws of Maryland. The Articles of Organization are attached hereto as Exhibit B-1. The address of the office of Lightning Electric is 3520 Ailsa Avenue, Baltimore, Maryland, 21214.
5. I am an electrician and have obtained a Master Electrician License from the State of Maryland's Department of Permitting Services.
6. I am one of the few Black owners of an electrical contracting business in my area. I am very proud of my success as a minority business owner in this field. My goal is to serve as an

example for the next generation of minority contractors, and, in particular, to provide opportunity and hope for incarcerated individuals and citizens returning home from prison. I also want to provide electrical contracting services in underserved communities.

7. I am also a restorative justice advocate. In 2017, I testified on a panel on Capitol Hill regarding the Pretrial Integrity and Safety Act, whose goal was to encourage States to replace the use of money bail as a condition of pretrial release. I discussed how the jail and cash bail system impacts people of color, and how facilities can increase rehabilitative resources to stop the revolving door of local jails. I have spoken in front of the Baltimore City Council and at universities on topics related to the criminal legal system, including the importance of education for individuals who are incarcerated.

8. I returned home from prison in 2017 and am on parole until 2022. I had pleaded guilty to charges of possession and possession with intent to distribute narcotics in the Circuit Court for Baltimore County in 2012. I served five years at the Maryland Correctional Institution.

9. While in prison, I enrolled in the Goucher College Prison Education Partnership and earned 40 credits toward my Bachelor's degree. I continued to learn about electrical work, to which I had first been exposed during an apprenticeship in 2005. I also worked as an electrician for the Maintenance Department of Maryland Correctional Institution while incarcerated. I also created business plans for starting my own company.

My business - Lightning Electric:

10. Lightning Electric serves both residential and commercial clients, providing installation of low and high-voltage electrical wiring. We are licensed to serve clients in seven counties across Maryland.

11. As the owner of Lightning Electric, I am responsible for all of the company's operations, finances (including payroll), client relations, and business development.

12. I have hired five contracted electricians to work for Lightning Electric. These electricians complete the majority of the client services. At times, I will join them in the field to speak with a

customer or address a specific issue. Typically, however, I focus on running business operations and developing new clients.

13. I have used Lightning Electric as a way to create economic opportunities for members of my community who are facing barriers to employment. Four of the electricians who work for Lightning Electric are formerly incarcerated individuals. The fifth electrician was an at-risk youth living in Baltimore City when I met him; I have provided him with training on electrical work and he is now an integral member of our team.

14. I provide Lightning Electric's workers with opportunities to learn about every aspect of the contracting business, including estimating costs for a project and material logistics. My goal is that those who work with me receive a holistic education about electrical contracting so that they, too, can become entrepreneurs.

15. In 2019, Lightning Electric had roughly \$170,000 in revenue. The company was just barely starting to turn a profit. In early 2020, before coronavirus-related closures, we were able to secure two large contracts. I intended to keep growing the company. One of my main goals for the future was to join Associated Builders and Contractors, a national trade association, so that some of Lightning Electric's electricians, who do not yet have their journeyman licenses, would be eligible for craft training and apprenticeship.

Paycheck Protection Program Application:

16. On March 5, 2020, Maryland Governor Larry Hogan declared a state of emergency in response to the novel coronavirus. On March 23, Governor Hogan issued an order closing all non-essential business in the state. On March 30, he issued a stay-at-home order to stop the spread of coronavirus and directed Marylanders to leave their homes only for an essential reason. Businesses across the state closed their doors.

17. Lightning Electric was forced to shut down operations almost completely in March as a result of the coronavirus and Governor Hogan's orders. During the time that the stay-at-home order was in place, I was unable to pay the electricians who work for Lightning Electric. While

we sometimes received small jobs from clients, the amount of work we had was at maximum 10-20% of our pre-coronavirus capacity. At least one of my workers had to apply for unemployment as a result.

18. I applied for a Small Business Administration (SBA) Paycheck Protection Program (PPP) loan on April 15, 2020.

19. I applied using the online portal of my bank, Wells Fargo.

20. On the application, I encountered two questions about my criminal history. I took a screen shot of these questions, which is attached hereto as Exhibit B-2. I answered “yes” to each of these questions, because I am currently on parole.

21. As soon as I hit “submit” on the PPP application, a screen popped up stating, “Based on the answers provided, your application cannot be processed at this time.” A screen shot of this message is attached hereto as Exhibit B-3.

22. Had I received the PPP loan, I intended to use it to pay the electricians working for Lightning Electric during the time period when business operations were shut down almost completely and the electricians were unable to work. I would have also used it to pay the costs necessary for the running of the business, including general liability insurance, which Lightning Electric is required to maintain in order to be eligible to apply for certain types of contracts.

23. At present, Maryland is in the first stages of re-opening. Lightning Electric is starting to have more work. However, we have still not reached anywhere near our pre-coronavirus capacity. The two contracts that we secured in early 2020 will proceed on a much longer time frame due to strict restrictions on how many people can be present at the job sites at one time. As a result, I expect that it will be a long time before Lightning Electric can expect payment for that work.

24. Despite the near-standstill in work, the company continues to have approximately \$9,000 in payroll expenses every other week. It is very important to me to keep Lightning Electric’s electricians on payroll and I would not want to cut any electricians from my team. Maintaining

our team of electricians is critical to the business's mission and ongoing survival; were I unable to continue funding payroll, we risk losing the business's reputation and customer relationships, which is its greatest asset.

25. Lightning Electric also has other overhead expenses, including insurance and advertising costs.

26. I have been pouring money – my own savings, as well as money from my family – into the company to keep it afloat. I estimate that I have cobbled together approximately \$30,000 in savings and small familial gifts and loans to help the company survive on a short-term basis.

27. The Company's finances continue to be precarious. I am constantly worried about funding. I know that there is a real risk that, without an influx of cash, Lightning Electric may not survive this economic crisis.

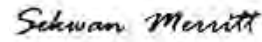
28. Some time after my application had been rejected, I learned that the SBA had put into place rules that prevent individuals with certain criminal records from being eligible for PPP loans.

29. I believe that the SBA's rule is unfair and wrong. Even in the best economic times, it is difficult for formerly incarcerated individuals to obtain financing; in the present economic crisis, such financing has become critical.

30. I am the owner of a successful business that creates economic opportunities for others and works to lift up the next generation of minority entrepreneurs in the contracting business. My residential and commercial clients rely on our services. There is no reason why we should be shut out of getting the assistance we need to let Lightning Electric survive and thrive.

I declare under penalty of perjury of the laws of the United States and the state of Maryland that the foregoing is true and correct.

This Declaration was signed by me on June, 15 (month and day), 2020, at
Odenton, Maryland (city, state).



Sekwan Merritt

Exhibit B-1

PROP PREP PROPERTIES, LLC
ARTICLES OF ORGANIZATION

The undersigned, being authorized to execute and file these Articles of Organization (these "Articles"), hereby forms a limited liability company on terms and conditions hereinafter set forth, and hereby certifies to the State Department of Assessments and Taxation of Maryland as follows:

FIRST: The sole member of limited liability company (the "Company") has designated Sekwan Merritt as an "authorized person," as that term is defined in §4A-101(c) of the Maryland Limited Liability Company Act (Title 4A of the CORPORATIONS AND ASSOCIATIONS ARTICLES of the ANNOTATED CODE OF MARYLAND, hereinafter referred to as the "Act"), for purposes of executing and filing these Articles of Organization, and any other documents or certificates that may be required to be filed on behalf of the Company with the State Department of Assessments and Taxation of Maryland from time to time.

SECOND: The name of the Company is:

Prop Prep Properties, LLC

THIRD: The address of the principal office of the Company in the State of Maryland is % Prop Prep Properties, 3520 Ailsa Avenue, Baltimore, Maryland 21214.

FOURTH: The name of the resident agent of the Company in Maryland is Tyra Crane, whose address is % 3520 Ailsa Avenue, Baltimore, Maryland 21214.

FIFTH: Except as otherwise provided by the Act, no member of the Company shall be personally liable for the obligations of the Company, whether arising in contract, tort or otherwise, solely by reason of being a member of the Company.

SIXTH: The relations of members of the Company and the affairs of the Company shall be governed by the Act as well as a written Operating Agreement (the "Operating Agreement") which may be amended from time to time as set forth therein.

SEVENTH: Pursuant to Section 4A-401(a)(3) of the Act, the authority of the Company to act for the Company solely by virtue of their being members is limited, and shall be only as set forth in the Operating Agreement of the Company.



Sekwan Merritt



Resident Agent


10/26/2017


Exhibit B-2



Wells Fargo - Getting Started

<https://apply.wellsfargo.com/businessdirect?...>



Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?



Yes



No

Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation, or parole?



Yes



No

Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?



Yes



No

Residency status



I am a
U.S.
Citizen



I have
Lawful
Permanent
Resident
status



Neither
status
applies

Exhibit B-3

apply.wellsfargo.com/businessdirect?execution=e1s1&page=OSMA_GETTING_STARTED_PAGE&token=wWbxaE8

WELLS FARGO

Sig

Thank you for your interest in Paycheck Protection Program Loan (CARES Act)

Based on the answers provided, your application cannot be processed at this time.

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Exhibit C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

DEFY VENTURES, INC., *et al.*,

Plaintiffs,

v.

**U.S. SMALL BUSINESS
ADMINISTRATION, *et al.***

Defendants.

CASE NO.:

**DECLARATION OF JOHN D. GARLAND IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

I, John D. Garland, declare:

1. I am over the age of eighteen. I have personal knowledge of the facts stated herein and am competent to testify to them.
2. I am a Black man, a small business owner, and an advocate for the formerly incarcerated, and for youth from a troubled background, like myself.
3. I am a resident of New York.
4. In 2007, I first entered the graphic design and commercial printing business, starting a small printing shop in the Bronx, New York. I had learned graphic design and commercial printing while incarcerated between 1987 (when I was 18 years old) and 2003. Because my employment opportunities were limited after my release, I decided to start my own business.
5. Since that time, I have been working hard to grow my business in order to provide for myself and my family (including my two young children), and to have an opportunity to help others. On August 4, 2014, I founded ClicClix Media Group, LLC, a holding company through which I would manage and operate my visual communications businesses. In 2018, I partnered

with a franchise company called Sign Me Up Signs and Advertising, a business for designing, producing, and selling signs and visual communications products for our clients. In December of 2019, Sign Me Up was acquired by Fastsigns International Inc., one of the largest and best companies for signs, banners, and graphics.

6. I now proudly own and operate a Fast Signs location in Bethpage, NY. I am a majority owner of the company for that location, and my official title is President of Sign Me Up Bethpage, Inc. d/b/a Fastsigns 2323 (“Fastsigns Bethpage”).

7. As a business owner, I also take pride in my ability to advocate for people who, like me, had a difficult childhood and lacked a lot of opportunities. I recently started a partnership with the United Way in which we would train and eventually employ a group of youths from troubled backgrounds. I hope to expand this program to the formerly incarcerated and veterans.

8. I also contribute to the Bethpage, NY community. Although I reside elsewhere, I consider myself a member of that community through my business, and I have donated signs to their schools, and distributed supplies related to the COVID-19 pandemic to senior citizens.

9. Unfortunately, due to some recent domestic difficulties with my wife, in October 2019, I was charged with a domestic violence offence, the allegations of which I denied. In December 2019, the case was adjourned in contemplation of dismissal, and a limited order of protection remained entered against me.

10. That same month, I was charged with petit larceny, because I moved a bag belonging to my wife to somewhere else in the house, and with a violation of the order of protection due to that petit larceny charge.

11. In February 2020, I appeared in court for that charge and pleaded not guilty. The case was adjourned for me to find counsel. In the meantime, the courts closed as a result of the COVID-19 pandemic, and thus the charge remains pending.

12. As a result of this charge, I was unable to apply for the Paycheck Protection Program (PPP), which I need in order to keep my business afloat, as I will explain in more detail below.

My Business - Sign Me Up/Fastsigns:

13. Fastsigns Bethpage serves both business and residential clients with their signs, letter, cards, and other graphic design needs. Prior to the COVID-19 pandemic, other businesses were our primary clients, but as a result of the pandemic our business clients have closed, and to try generate some revenue we have shifted our business more to a residential focus—though the volume of business is far less.

14. As the majority owner of Fastsigns Bethpage, I am responsible for all of the company's operations, finances (including payroll), client relations, and business development.

15. Fastsigns Bethpage has three employees, including myself, who operate the business and manage sales and production.

16. I am also a 15% stake owner in a Fastsigns franchise in West Babylon, NY. That location is larger and has more fabrication responsibilities, and it employs six people.

17. I have always wanted to use my business as a way to help other people who have had to come up through a difficult background. I grew up in the South Bronx in the 1970's and '80s, when drugs and violence plagued that neighborhood. Like many other people, both of my parents were addicted to drugs, and both died when I was young. I want to help young people in these types of situation to avoid what I had to go through, to have better opportunities, and to help the formerly incarcerated as well.

18. In 2019, I began partnering with United Way to train and employ thirteen youth from troubled backgrounds. I had an initial training session with them in 2020, but we had to discontinue the program as a result of the COVID-19 pandemic. I plan on resuming the program once everything is up and running again.

19. We have also partnered with New York State in a program designed to assist autistic youth, and provide them training in graphic design and commercial printing opportunities.

20. In 2019, Fastsigns Bethpage had over \$84,000 in revenue, and based on the growth of business we were set to expand further in 2020. We were just beginning to be able to pay myself and my business partner, who also works at that location, in full, and we are well-respected in the community.

21. I also assist with the West Babylon location, and I hope that if we have continued success in these locations, we can expand our business further.

Paycheck Protection Program Application:

22. On March 7, 2020, New York Governor Andrew Cuomo declared a state of emergency in response to the novel coronavirus. On March 20, Governor Cuomo issued an order closing all non-essential businesses in the state and prohibited all non-essential gatherings of individuals of any size, effective March 22. Businesses across the state closed their doors.

23. Fastsigns Bethpage shut down as a result of the order for over one week. However, it was subsequently deemed an essential business, and we re-opened.

24. Despite re-opening, our business has drastically fallen. Our primary clients prior to the pandemic were other businesses. Because most of those businesses are closed or otherwise affected, they are not purchasing signs and other graphic design supplies.

25. We are working hard and doing as much as we can to stay afloat, including shifting our businesses to residences, and working on lawn signs for graduations and the like. But this business is a fraction of our previous business.

26. When we first found out about the PPP, we thought it was a godsend. We were so hopeful. From what we learned about the criteria, it seemed like it was broadly available to all businesses affected by this pandemic, and we thought it would help us stay afloat. My business partners and I had a long strategy session, in which we mapped out how we would use the funds. We intended to apply for \$100,000, which we would apply to payroll, rent, utility, and other expenses.

27. I began applying for a Small Business Administration (SBA) Paycheck Protection Program (PPP) loan on April 10, 2020.

28. I began filling out the application online with my business partner. On the application, I encountered two questions about my criminal history. Because I have misdemeanor charges pending against me, my answer to Question 5 would be “yes.”

29. Because the application states, “If questions (5) or (6) are answered ‘Yes,’ the loan will not be approved,” we did not continue with our application, because it would clearly be denied.

30. I was devastated. We are a business that has employees, we are an active business, we are active in the community, and we pay our taxes just like every other business. We should be eligible on the same terms as all other businesses.

31. After stopping this application, we tried again a few weeks later. We consulted with Chase bank, with which we have a small business account, and confirmed that their PPP application also had the same disqualifying question. I took a screen shot of these questions, which is attached hereto as Exhibit C-1.

32. Right now, New York is in the early stages of re-opening. Although we have been fighting to provide business to whoever still needed it throughout the pandemic, we expect that once more businesses re-open, we will get more business. However, that is not yet happening.

33. Without assistance from PPP, our business that we have worked so hard to build is at risk of collapse. We are currently thousands of dollars behind on rent and utility costs. We have negotiated with the landlord to defer payment of rent for March and April, but we have to pay this back soon. I have not been taking a paycheck for some time. It also meant that we could not go forward to hire youth as part of our partnership with United Way of Long Island. I am worried that Fastsigns Bethpage may not survive this economic crisis.

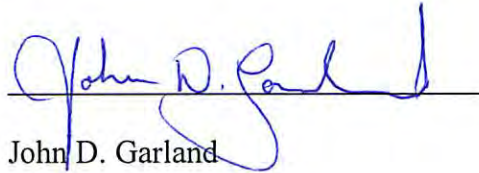
34. The SBA’s rule prohibiting people with pending charges is very upsetting to me. I have faced many obstacles in my life getting my business up and running, and have struggled with obtaining financing. Being a formerly incarcerated person and being Black has made obtaining

financing even more difficult. But through all of that, I believe in everyone's ability to achieve success in this country, and I want to help other people get there as well. It is extremely unfair that I would be denied funding intended to assist people through this crisis just because I have a pending charge for which I have not been convicted and which I strenuously deny guilt.

35. I am the owner of a growing small business, which not only provides a livelihood for myself and our employees, but provides necessary services to the community and other businesses. There is no reason that our business should be denied the chance to survive this crisis, and continue to grow into the future or that employees of my business should not be able to be paid because I am have pending misdemeanor charges for which I strenuously maintain my innocence.

I, John Garland, pursuant to 28 U.S.C § 1746 and subject to the penalties of perjury, declare the Foregoing is true and correct.

Dated: June 15, 2020



John D. Garland

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DEFY VENTURES, INC., *et al.*,

Plaintiffs,

v.

U.S. SMALL BUSINESS
ADMINISTRATION, *et al.*

Defendants.

CASE NO.:

**DECLARATION OF DR. CHRISTOPHER WILDEMAN IN SUPPORT OF
PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**

I, Christopher Wildeman, declare:

1. As I detail below, my analyses provide support for two conclusions. First, in the NLSY79, the longitudinal dataset best suited to estimating the share of business owners in a specific cohort¹ who have ever been incarcerated, that roughly 2% of the White business owners, 15% of the Black business owners, and 10% of Latinx business owners in this cohort have ever been incarcerated. Second, that baseline conclusion increases the probability that the Small Business Administration (SBA)'s Interim Final Rule (IFR) making applicants with certain criminal justice system involvement ineligible for the Paycheck Protection Program (PPP) has made, and will continue to make, Black and Latinx small business owners disproportionately ineligible for PPP loans.

Relevant Qualifications and Experience

2. As outlined in my attached CV:

¹ The NLSY79 cohort is now in their late 40s and early 50s, but there is no reason to expect that the racial/ethnic disparities I estimate for this specific cohort would not also be present in other cohorts of small business owners.

- a. Effective July 1, 2020, I will be a professor of sociology at Duke University.
 - b. Previously, I was a Professor of Policy Analysis and Management and Sociology (by courtesy) at Cornell University, where I was also the Associate Vice Provost for the Social Sciences, Director of the Bronfenbrenner Center for Translational Research, and Director of the National Data Archive on Child Abuse and Neglect.
 - c. I received my PhD in sociology and demography from Princeton University in 2008 and MA in sociology and demography from Princeton University in 2006.
3. I am a demographer and, among other work using life table methods, I have generated estimates of the cumulative risk of imprisonment for adult males (Western & Wildeman, 2009) and the cumulative risk of parental imprisonment for children (Wildeman, 2009).
4. Through this work, as well as other work using life tables, some of which estimates the cumulative prevalence of other events (e.g., Wildeman & Emmanuel, 2014), I have become an expert on using these demographic methods to estimate cumulative risks of, among other things, being arrested, being convicted of a crime, and being incarcerated.
5. Because of my work as a Visiting Fellow at the Bureau of Justice Statistics, I am also an expert on criminal justice datasets and the ways those data can be used to estimate racial/ethnic disparities in the cumulative risk of experiencing criminal justice contact.

Data Considered

6. I have been made aware of, although I have not reviewed in its entirety, the portion of interim Final Rule (IFR), in effect before June 12, 2020, that was promulgated by the Small Business Administration (SBA) to implement the Paycheck Protection Program (PPP) that bars PPP applicants who have “[a]n owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal

charges are brought in any jurisdiction; or has been convicted of a felony within the last five years[.]”²

7. I have also been made aware of, although I have not reviewed in its entirety, the public application form for the PPP loans, in effect before June 12, 2020, which broadened the pool of applicants ineligible for loans, namely, people who pleaded no contest and people who have been placed on pre-trial diversion.³ I am aware that this broadening indicates that many individuals who have been incarcerated but never convicted would also be ineligible for said loans.
8. Finally, I considered the National Longitudinal Survey, 1979 (NLYS79), which has collected, among other data, race, ethnicity, employment (including business ownership in some waves), and criminal justice contact data on survey participants since 1979.⁴

Methods Used to Interpret and Apply Data

9. I used the following methods to interpret the relevant NLYS79 data and to apply it to IFR’s ineligibility criteria cited above: birth cohort life tables estimating the cumulative probability of prison and jail incarceration for African American, Latinx, and White individuals who said that they had ever been or were currently business owners.
10. These methods are widely used in sociology and demography and can be verified against other published analyses of the NLYS79 data from earlier waves (e.g., Western, 2002).

Conclusion Restated

11. To restate, as I detail above, my analyses provide support for two conclusions. First, in the NLSY79, the longitudinal dataset best suited to estimating the share of business owners in a specific cohort who have ever been incarcerated, that roughly 2% of the White business owners, 15% of the Black business owners, and 10% of Latinx business

² Business Loan Program Temporary Changes; Paycheck Protection Program, 85 FR 20811-01.

³ SBA, Paycheck Protection Program: Borrower Application Form, OMB Control No.: 3245-0407 (Expiration Date: 09/30/2020).

⁴ See <https://www.bls.gov/nls/nlsy79.htm> (last visited on June 12, 2020); <https://www.nlsinfo.org/content/cohorts/nlsy79> (last visited on June 12, 2020).

owners in this cohort have ever been incarcerated. Second, that baseline conclusion increases the probability that the Small Business Administration (SBA)'s Interim Final Rule (IFR) making applicants with certain criminal justice system involvement ineligible for the Paycheck Protection Program (PPP) has made, and will continue to make, Black and Latinx small business owners disproportionately ineligible for PPP loans.

I declare pursuant to 28 U.S.C § 1746 and under penalty of perjury that the foregoing is true and correct.

Executed on:
June 13th, 2020

A handwritten signature in blue ink, appearing to read 'C. Wildeman', is written over a light blue rectangular background.

Dr. Christopher Wildeman

Exhibit D-1

CHRISTOPHER WILDEMAN

CONTACT INFORMATION

OFFICE: Department of Sociology
 327 Soc/Psych Building, 417 Chapel Drive, Durham, NC 27708
 EMAIL: cjw93@duke.edu
 PHONE: 609.462.6797

EMPLOYMENT AND AFFILIATIONS

2020- DUKE UNIVERSITY
 Professor of Sociology (2020-)
 Director. National Data Archive on Child Abuse and Neglect (NDACAN) (2020-)

2016- UNIVERSITY OF WISCONSIN, MADISON
 Research Affiliate. Institute for Research on Poverty (IRP)

2015- ROCKWOOL FOUNDATION RESEARCH UNIT
 Professor (2019-)
 Senior Researcher (2015-2019)

2014- CORNELL UNIVERSITY
 Associate (2014-2017) to Full Professor of Policy Analysis & Management (2017-2020)
 Associate (Courtesy, 2017) to Full Professor of Sociology (Courtesy, 2017-2020)
 Associate Director. Bronfenbrenner Center for Translational Research (BCTR) (2016-2018)
 Associate Vice Provost for the Social Sciences (2019-2020)
 Co-Director. National Data Archive on Child Abuse and Neglect (NDACAN) (2015-2018)
 Director. Bronfenbrenner Center for Translational Research (BCTR) (2018-2020)
 Director. Development Core. Cornell Population Center (CPC) (2016-2020)
 Director. National Data Archive on Child Abuse and Neglect (NDACAN) (2018-2020)
 Provost Fellow for the Social Sciences (2018-2019)

2012-2017 UNITED STATES DEPARTMENT OF JUSTICE
 Visiting Fellow. Bureau of Justice Statistics

2010-2014 YALE UNIVERSITY
 Assistant (2010-2013) to Associate (2013-2014) Professor of Sociology

2008-2010 UNIVERSITY OF MICHIGAN
 Robert Wood Johnson Foundation Health & Society Scholar

EDUCATION

2008 PH.D. IN SOCIOLOGY AND DEMOGRAPHY. PRINCETON UNIVERSITY
Parental Incarceration, the Prison Boom, and the Intergenerational Transmission of Stigma and Disadvantage (Committee: Sara McLanahan, Bruce Western, Devah Pager)

2006 M.A. IN SOCIOLOGY AND DEMOGRAPHY. PRINCETON UNIVERSITY
 Examinations: Crime and Punishment, Demography, Family Demography, Religion

2002 B.A. IN PHILOSOPHY, SOCIOLOGY, AND SPANISH. DICKINSON COLLEGE
 Honors: *Magna Cum Laude*, Departmental Honors in Sociology, Phi Beta Kappa

BOOKS AND EDITED VOLUMES (* INDICATES REFEREED)

- 2017 WILDEMAN, CHRISTOPHER, Anna R. Haskins, and Julie Poehlmann-Tynan, eds. *When Parents Are Incarcerated: Interdisciplinary Research and Interventions to Support Children*. Washington, DC: American Psychological Association Press.
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*Sundaresh, Ram,[†] Youngmin Yi,[†] Brita Roy, Carley Riley, CHRISTOPHER WILDEMAN, and Emily A. Wang. "Exposure to the US Criminal Legal System and Well-Being: A 2018 Cross-Sectional Study." *American Journal of Public Health* 110:S116-S122.

2019 *Enns, Peter K., Youngmin Yi,[†] Megan Comfort, Alyssa Goldman,[†] Hedwig Lee, Christopher Muller, Sara Wakefield, Emily A. Wang, and CHRISTOPHER WILDEMAN. "What Percentage of Americans Have Ever Had a Family Member Incarcerated? Evidence from the Family History of Incarceration Survey (FamHIS)." *Socius* 6.

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*Branigan, Amelia R., and CHRISTOPHER WILDEMAN. "Parental Incarceration and Child Overweight: Results from a Sample of Disadvantaged Children in the United States." *Public Health Reports* 134:363-370.

2018 Yi, Youngmin,[†] and CHRISTOPHER WILDEMAN. "Can Foster Care Interventions Diminish Justice System Inequality?" *Future of Children* 28:37-58.

*WILDEMAN, CHRISTOPHER, Maria D. Fitzpatrick, and Alyssa Goldman.[†] "Conditions of Confinement in American Prisons and Jails." *Annual Review of Law and Social Science* 14:29-47.

*WILDEMAN, CHRISTOPHER, Alyssa Goldman,[†] and Kristin Turney. "Parental Incarceration and Child Health in the United States." *Epidemiologic Reviews* 40:146-156.

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- *Branigan, Amelia R., CHRISTOPHER WILDEMAN, Jeremy Freese, and Catarina I. Kiefe. "Complicating Colorism: Race, Skin Color, and the Likelihood of Arrest." *Socius* 3.
- *Eason, John M., Danielle Zucker,[†] and CHRISTOPHER WILDEMAN. "Mass Imprisonment Across the Rural-Urban Continuum." *ANNALS of the American Academy of Political and Social Science* 672:202-216.
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- *Yi, Youngmin,[†] Kristin Turney, and CHRISTOPHER WILDEMAN. "Mental Health Among Prison and Jail Inmates." *American Journal of Men's Health* 11:900-909.
- 2016 *WILDEMAN, CHRISTOPHER. "Incarceration and Population Health in Wealthy Democracies." *Criminology* 54:360-382.
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- *Turney, Kristin, and CHRISTOPHER WILDEMAN. "Mental and Physical Health of Children in Foster Care." *Pediatrics* 138:e20161118.
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*WILDEMAN, CHRISTOPHER, Margaret E. Noonan, Daniela Golinelli, E. Ann Carson, and Natalia Emanuel.[†] “State-Level Variation in the Imprisonment-Mortality Relationship, 2001-2010.” *Demographic Research* 34:359-372.

WILDEMAN, CHRISTOPHER. “Is It Better to Sit on Our Hands or Just Dive in? Cultivating Family-Friendly Criminal Justice Policy in the Contemporary Era.” *Criminology and Public Policy* 15:497-502.

*WILDEMAN, CHRISTOPHER, Kristin Turney, and Youngmin Yi.[†] “Paternal Incarceration and Family Functioning: Variation Across Federal, State, and Local Facilities.” *ANNALS of the American Academy of Political and Social Science* 665:80-97.

Wakefield, Sara, Hedwig Lee, and CHRISTOPHER WILDEMAN. “Tough on Crime, Tough on Families? Criminal Justice and Family Life in America.” *ANNALS of the American Academy of Political and Social Science* 665:8-21.

2015 *Lee, Hedwig, Tyler McCormick, Margaret T. Hicken, and CHRISTOPHER WILDEMAN. “Inequalities in Connectedness to Imprisoned Individuals in the United States.” *Du Bois Review* 12:269-282.

*Papachristos, Andrew V., CHRISTOPHER WILDEMAN, and Elizabeth Roberto. “Tragic, but not Random: The Social Contagion of Non-Fatal Gunshot Injuries.” *Social Science and Medicine* 125:139-150.

*Fallesen, Peter,[†] and CHRISTOPHER WILDEMAN. “The Effect of Medical Treatment of Attention Deficit Hyperactivity Disorder (ADHD) on Foster Care Caseloads: Evidence from Danish Registry Data.” *Journal of Health and Social Behavior* 56:398-414.

*Turney, Kristin, and CHRISTOPHER WILDEMAN. “Self-Reported Health Among Recently Incarcerated Mothers.” *American Journal of Public Health* 105:2014-2020.

*WILDEMAN, CHRISTOPHER, and Lars H. Andersen.[†] “Cumulative Risks of Paternal and Maternal Incarceration in Denmark and the United States.” *Demographic Research* 32:1567-1580.

*Andersen, Lars H.,[†] and CHRISTOPHER WILDEMAN. “Measuring the Effect of Probation and Parole Officers on Labor Market Outcomes and Recidivism.” *Journal of Quantitative Criminology* 31:629-652.

*Patterson, Evelyn J., and CHRISTOPHER WILDEMAN. “Mass Imprisonment and the Life Course Revisited: Cumulative Years Spent Imprisoned and Marked for Working-Age Black and White Men.” *Social Science Research* 53:325-337.

*Turney, Kristin, and CHRISTOPHER WILDEMAN. “Detrimental for Some? The Heterogeneous Effects of Maternal Incarceration on Child Wellbeing.” *Criminology and Public Policy* 14:125-156.

*Bacak, Valerio,[†] and CHRISTOPHER WILDEMAN. “An Empirical Assessment of the Healthy Prisoner Hypothesis.” *Social Science and Medicine* 138:187-191.

2014 *WILDEMAN, CHRISTOPHER, and Kristin Turney. “Positive, Negative, or Null? The Effects of Maternal Incarceration on Children’s Behavioral Problems.” *Demography* 51:1041-1068.

*WILDEMAN, CHRISTOPHER, and Jane Waldfogel. “Somebody’s Children or Nobody’s Children? How the Sociological Perspective Could Enliven Research on Foster Care.” *Annual Review of Sociology* 40:599-618.

*WILDEMAN, CHRISTOPHER, Natalia Emanuel,[†] John M. Leventhal, Emily Putnam-Hornstein, Jane Waldfogel, and Hedwig Lee. “The Prevalence of Confirmed Maltreatment Among US Children, 2004-2011.” *JAMA Pediatrics* 168:706-713.

*WILDEMAN, CHRISTOPHER, and Natalia Emanuel.[†] “Cumulative Risks of Foster Care Placement for American Children, 2000-2011.” *PLOS ONE* 9:e92785.

*WILDEMAN, CHRISTOPHER, Signe Hald Anderson, Hedwig Lee, and Kristian Bernt Karlson. “Parental Incarceration and Child Mortality in Denmark.” *American Journal of Public Health* 104:428-433

*Fallesen, Pater,[†] Natalia Emanuel,[†] and CHRISTOPHER WILDEMAN. “Cumulative Risks of Foster Care Placement for Danish Children.” *PLOS ONE* 9:e109207.

WILDEMAN, CHRISTOPHER, and Sara Wakefield. “The Long Arm of the Law: The Concentration of Incarceration in Families in the Era of Mass Incarceration.” *Journal of Gender, Race, and Justice*. 17:367-389

*Lee, Hedwig, CHRISTOPHER WILDEMAN, Emily A. Wang, Nikki Matusko, and James S. Jackson. “A Heavy Burden? The Cardiovascular Health Consequences of Having a Family Member Incarcerated.” *American Journal of Public Health* 104:421-427.

*WILDEMAN, CHRISTOPHER, Kristin Turney, and Jason Schnittker. “The Hedonic Consequences of Punishment Revisited.” *Journal of Criminal Law and Criminology* 104:133-163.

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*Andersen, Signe Hald, and CHRISTOPHER WILDEMAN. “The Effect of Paternal Incarceration on Children’s Risk of Foster Care Placement.” *Social Forces* 93:269-298.

Weaver, Vesla M., Jacob S. Hacker, and CHRISTOPHER WILDEMAN. “Detaining Democracy? Criminal Justice and American Civic Life.” *ANNALS of the American Academy of Political and Social Science* 651:6-21.

*Papachristos, Andrew V., and CHRISTOPHER WILDEMAN. “Network Exposure and Homicide Victimization in an African-American Community.” *American Journal of Public Health* 104:143-150.

*Dumont, Dora, CHRISTOPHER WILDEMAN, Hedwig Lee, Annie Gjelsvik, Pamela Valera, and Jennifer G. Clarke. “Incarceration, Maternal Hardship, and Perinatal Health Behaviors.” *Maternal and Child Health Journal* 18:2179-2187.

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- Birnbaum, Nathan, Melissa Lavoie, Nicole Redmond, CHRISTOPHER WILDEMAN, and Emily A. Wang. "Termination of Medicaid Policies and Implications for the Affordable Care Act." *American Journal of Public Health* 108:e3-e4.
- 2013 *Turney, Kristin, and CHRISTOPHER WILDEMAN. "Redefining Relationships: Explaining the Countervailing Consequences of Paternal Incarceration for Parenting Quality." *American Sociological Review* 78:949-979.
- *WILDEMAN, CHRISTOPHER, Hedwig Lee, and Megan Comfort. "A New Vulnerable Population? The Health of Female Partners of Men Recently Released from Prison." *Women's Health Issues* 23:e335-e340.
- *WILDEMAN, CHRISTOPHER, Sara Wakefield, and Kristin Turney. "Misidentifying the Effects of Parental Incarceration? A Comment on Johnson and Easterling (2012)." *Journal of Marriage and Family* 75:252-258
- *Lee, Hedwig, and CHRISTOPHER WILDEMAN. "Things Fall Apart: Health Consequences of Mass Imprisonment for African American Women." *Review of Black Political Economy* 40:39-52.
- 2012 *WILDEMAN, CHRISTOPHER, and Christopher Muller. "Mass Imprisonment and Inequality in Health and Family Life." *Annual Review of Law and Social Science* 8:11-30.
- *Turney, Kristin, CHRISTOPHER WILDEMAN, and Jason Schnittker. "As Fathers and Felons: Explaining the Effects of Current and Recent Incarceration on Major Depression." *Journal of Health and Social Behavior* 53:467-483.
- *Turney, Kristin, Jason Schnittker, and CHRISTOPHER WILDEMAN. "Those They Leave Behind: Paternal Incarceration and Maternal Instrumental Support." *Journal of Marriage and Family* 74:1149-1165.
- *WILDEMAN, CHRISTOPHER. "Imprisonment and Infant Mortality." *Social Problems* 59:228-257.
- *WILDEMAN, CHRISTOPHER, Jason Schnittker, and Kristin Turney. "Despair by Association? The Mental Health of Mothers with Children by Recently Incarcerated Fathers." *American Sociological Review* 77:216-243.
- *WILDEMAN, CHRISTOPHER. "Imprisonment and (Inequality in) Population Health." *Social Science Research* 41:74-91.
- 2011 *Wakefield, Sara, and CHRISTOPHER WILDEMAN. "Mass Imprisonment and Racial Disparities in Childhood Behavioral Problems." *Criminology and Public Policy* 10:791-817.
- *Wang, Emily A., and CHRISTOPHER WILDEMAN. "Studying Health Disparities by Including Incarcerated and Formerly Incarcerated Individuals." *JAMA* 305:1708-1709.
- WILDEMAN, CHRISTOPHER. "Invited Commentary: (Mass) Imprisonment and (Inequities in) Health." *American Journal of Epidemiology* 173:488-491.
- WILDEMAN, CHRISTOPHER. "Commentary on Roettger et al. (2011): Confronting the Elephant in the Room." *Addiction* 106:133-134.
- 2010 *WILDEMAN, CHRISTOPHER. "Paternal Incarceration and Children's Physically Aggressive Behaviors: Evidence from the Fragile Families and Child Wellbeing Study." *Social Forces* 89:285-310.

2008 Outstanding Graduate Student Paper. ASA Crime, Law, and Deviance Section.

WILDEMAN, CHRISTOPHER, and Bruce Western. "Incarceration in Fragile Families." *Future of Children* 20:157-177.

- 2009 *WILDEMAN, CHRISTOPHER, and Christine Percheski. "Associations of Childhood Religious Attendance, Family Structure, and Nonmarital Fertility Across Cohorts." *Journal of Marriage and Family* 71:1294-1308.

*WILDEMAN, CHRISTOPHER. "Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage." *Demography* 46:265-280.

2008 Dorothy Thomas Award. Population Association of America.

2007 Outstanding Graduate Student Paper. ASA Children and Youth Section.

2007 Outstanding Graduate Student Paper. ASA Sociology of Family Section.

Western, Bruce, and CHRISTOPHER WILDEMAN. "The Black Family and Mass Incarceration." *ANNALS of the American Academy of Political and Social Science* 621:221-242.

Portions reprinted in: Western, Bruce, and CHRISTOPHER WILDEMAN. "Punishment, Inequality, and the Future of Mass Incarceration." *Kansas Law Review* 57:851-877.

- 2008 *WILDEMAN, CHRISTOPHER. "Soliciting Prayer for the Absent, Measuring Their Social Worth: Prayer Requests for the Deployed and the Incarcerated." *Poetics* 36:421-434.

*Cadge, Wendy, and CHRISTOPHER WILDEMAN. "Facilitators and Advocates: How Mainline Protestant Clergy Respond to Homosexuality." *Sociological Perspectives* 51:587-603.

*WILDEMAN, CHRISTOPHER. "Conservative Protestantism and Paternal Engagement in Fragile Families." *Sociological Forum* 23:556-574.

*Cadge, Wendy, Laura Olson, and CHRISTOPHER WILDEMAN. "How Denominational Context Influences Debate about Homosexuality in Mainline Protestant Congregations." *Sociology of Religion* 69:187-207.

*Percheski, Christine, and CHRISTOPHER WILDEMAN. "Becoming a Dad: Employment Trajectories of Married, Cohabiting, and Nonresidential Fathers." *Social Science Quarterly* 26:482-501.

- 2007 *Cadge, Wendy, Heather Day, and CHRISTOPHER WILDEMAN. "Bridging the Denomination-Congregation Divide: Evangelical Lutheran Church in America Congregations Respond to Homosexuality." *Review of Religious Research* 48:245-259.

OP-EDS, BOOK REVIEWS, AND OTHER WRITINGS

- 2020 WILDEMAN, CHRISTOPHER, and Lars H. Andersen. "Even Better Data on Solitary Confinement Are Needed." *Lancet Public Health*.
- 2019 Goldman, Alyssa,[†] Lars H. Andersen, Signe H. Andersen, and CHRISTOPHER WILDEMAN. "Can Alternatives to Incarceration Enhance Child Well-being?" Pp. 237-248 in *Handbook on Children with Incarcerated Parents: Research, Policy, and Practice: Second Edition*, Edited by J. Mark Eddy and Julie Poehlmann-Tynan.
- 2018 Wakefield, Sara, and CHRISTOPHER WILDEMAN. "How Much Might Mass Imprisonment Affect Inequality?" Pp. 58-72 in *Prisons, Punishment, and Families: Towards a New Sociology of Punishment*, Edited by Rachel Condry and Peter Scharff Smith. New York, NY: Oxford University Press.

*Wakefield, Sara, and CHRISTOPHER WILDEMAN. “How Parental Incarceration Harms Children and What To Do About It.” *National Council on Family Relations Policy Brief* 3:1-6

Brew, Bridget,[†] Alyssa Goldman,[†] and CHRISTOPHER WILDEMAN. “Effects of Corrections on Families and Communities.” Pp. 443-454 in *Routledge Handbook of Corrections in the United States*, Edited by O. Hayden Griffin III and Vanessa H. Woodward. New York, NY: Routledge Press.

- 2017 WILDEMAN, CHRISTOPHER, Anna R. Haskins, and Julie Poehlmann-Tynan. “Invigorating Research and Practice on Children of Incarcerated Parents.” Pp. 3-8 in *When Parents Are Incarcerated: Interdisciplinary Research and Interventions to Support Children*, Edited by CHRISTOPHER WILDEMAN, Anna R. Haskins, and Julie Poehlmann-Tynan. Washington, DC: American Psychological Association Press.

WILDEMAN, CHRISTOPHER, Anna R. Haskins, and Julie Poehlmann-Tynan. “Steps for Future Interdisciplinary Research and Interventions for Children with Incarcerated Parents.” Pp. 195-200 in *When Parents Are Incarcerated: Interdisciplinary Research and Interventions to Support Children*, Edited by CHRISTOPHER WILDEMAN, Anna R. Haskins, and Julie Poehlmann-Tynan. Washington, DC: American Psychological Association Press.

*Andersen, Signe Hald, Lars H. Andersen, Maria D. Fitzpatrick, and CHRISTOPHER WILDEMAN. “How Alternatives to Imprisonment Could Affect Child Well-Being.” Pp. 151-172 in *When Parents Are Incarcerated: Interdisciplinary Research and Interventions to Support Children*, Edited by CHRISTOPHER WILDEMAN, Anna R. Haskins, and Julie Poehlmann-Tynan. Washington, DC: American Psychological Association Press.

- 2016 WILDEMAN, CHRISTOPHER. “Book Review of *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America* by Todd R. Clear and Natasha A. Frost. New York, NY: New York University Press, 2013. 269 pp. \$30 cloth. ISBN: 9780814717196.” *Contemporary Sociology* 45:33-35.

- 2015 WILDEMAN, CHRISTOPHER. “Incarceration and Health.” In *Emerging Trends in the Social and Behavioral Sciences*, Edited by Robert A. Scott and Stephen M. Kosslyn. John Wiley & Sons, Inc.

WILDEMAN, CHRISTOPHER. “Book Review of *Pulled Over: How Police Stops Define Race and Citizenship* by Charles E. Epp, Steven Maynard-Moody, and Donald P. Haider-Markel. Chicago, IL: University of Chicago Press. Pp. xvii + 253. \$25.00 (paper).” *American Journal of Sociology* 115:1555-1557.

WILDEMAN, CHRISTOPHER. “Book Review of *Invisible Men: Mass Incarceration and the Myth of Black Progress* by Becky Pettit. Russell Sage Foundation, 2012, 141 Pages. \$29.95 (paper).” *Social Forces* e89.

- 2013 WILDEMAN, CHRISTOPHER. “How Mass Imprisonment Has – and Has Not – Shaped Childhood Inequality.” *Communities and Banking* 25:7-9.

*WILDEMAN, CHRISTOPHER, Anna R. Haskins, and Christopher Muller. “Implications of Mass Imprisonment for Inequality among American Children.” Pp. 177-191 in *The Punitive Turn: New Approaches to Race and Incarceration*, Edited by Deborah E. McDowell, Claudrena Harold, and Juan Battle. Charlottesville: University of Virginia Press.

Fallesen, Peter,[†] Natalia Emanuel,[†] and CHRISTOPHER WILDEMAN. “Den Kumulative Risiko for Anbringelse Udenfor Hjemmet.” Pp. 31-44 in *Nar Man Anbringer et Barn, del 2: Arsager, Effekter og Konsekvenser*, Edited by Signe Hald Andersen and Peter Fallesen. Odense: University Press of Southern Denmark.

WILDEMAN, CHRISTOPHER, and Signe Hald Andersen. “Nar Dar Kommer i Fængsel.” Pp. 71-100 in *Nar Man Anbringer et Barn, del 2: Arsager, Effekter og Konsekvenser*, Edited by Signe Hald Andersen and Peter Fallesen. Odense: University Press of Southern Denmark.

2012 Muller, Christopher, and CHRISTOPHER WILDEMAN. “Punishment and Inequality.” Pp. 169-185 in *Handbook of Punishment and Society*, Edited by Jonathan Simon and Richard Sparks. London: Sage Publications.

2010 *WILDEMAN, CHRISTOPHER. “Mass Parental Imprisonment, Social Policy, and the Future of Inequality in America.” Pp. 303-317 in *Children of Incarcerated Parents: A Handbook for Researchers and Practitioners*, Edited by J. Mark Eddy and Julie Poehlmann. Washington: Urban Institute Press.

2008 WILDEMAN, CHRISTOPHER, and Christopher Muller. “Incarceration, Adulthood.” Pp. 221-225 in *Encyclopedia of the Life Course and Human Development: Volume 2*, Edited by Deborah Carr. Detroit: MacMillan Reference USA.

UNDER REVIEW AND IN PROGRESS (R&R; UR [UNDER REVIEW]; AND IP [IN PROGRESS])

R&R WILDEMAN, CHRISTOPHER and Hedwig Lee. “How Are Women Faring in the Carceral State?” Invited contribution to *Annual Review of Sociology*.

UR Yi, Youngmin,[†] Joseph Kennedy, Cynthia Chazotte, Mary Huynh, Yang Jian, and CHRISTOPHER WILDEMAN. “Paternal Incarceration and Birth Outcomes: Evidence from New York City, 2010-2016.”

Anker, Anne Sofie Tegner,[†] and CHRISTOPHER WILDEMAN. “Identifying and Explaining Patterns in Family Visitation During Incarceration.”

Fitzpatrick, Maria D., Lars H. Andersen, and CHRISTOPHER WILDEMAN. “How Does Visitation Affect Incarcerated Persons and Their Families? Estimates Using Exogenous Variation in Visits Driven by Distance Between Home and Prison.”

Putnam-Hornstein, Emily, Eunhye Ahn, John Prindle, and CHRISTOPHER WILDEMAN. “A Birth Cohort Study of Child Protection Involvement and Termination of Parental Rights Due to Child Abuse and Neglect.”

Yi, Youngmin,[†] and CHRISTOPHER WILDEMAN. “How the AFCARS and NCANDS Can Provide Insight into Linked Administrative Data.”

Brew, Bridget,[†] Frances Alani,[†] Huixian Li,[†] and CHRISTOPHER WILDEMAN. “Sticky Stigma: The Impact of Incarceration on Perceptions of Personality Traits and Deservingness.”

IP Yi, Youngmin,[†] Peter K. Enns, and CHRISTOPHER WILDEMAN. “(How) Does Incarceration Shape Civic Participation, Community Engagement, and Trust in the State?”

Edwards, Frank R., Sara Wakefield, and CHRISTOPHER WILDEMAN. “The Cumulative Risk of Child Welfare System Involvement in Large U.S. Counties.”

Yi, Youngmin,[†], Natalia Emanuel,[†] Jane Waldfogel, John M. Leventhal, Hedwig Lee, and CHRISTOPHER WILDEMAN. “State-Level Variation in the Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placement Among US Children, 2004-2015.”

Roehrkasse, Alexander F., Christopher Muller, and CHRISTOPHER WILDEMAN. “Moving Beyond Black and White: Estimating the Cumulative Prevalence of Imprisonment and Parental Imprisonment for Asian Americans and Native Americans, 1986-2004.”

SELECTED GRANTS, AWARDS, AND FELLOWSHIPS (TOTAL COSTS LISTED FOR ALL GRANTS)

| | |
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| 2020-2022 | “Mass Incarceration and Violence in Families.” National Science Foundation. \$138,000 (Role: Co-PI; Project to fund Tasseli McKay as a National Science Foundation Postdoc). |
| 2019-2021 | “Transitioning: An App-Based Pilot Study of Youth on the Cusp of Leaving Home.” Conrad N. Hilton Foundation. \$250,000 (Role: PI). |
| 2019-2020 | “Demographic Projections of the Child Welfare Population.” Casey Family Programs. \$198,00 (Role: PI). |
| 2019 | “Exploring the Causes of Native American Exceptionalism in the Child Welfare System.” Casey Family Programs. \$50,00 (Role: PI). |
| 2018-2020 | “Measuring Familial History of Incarceration.” FWD.us. \$472,500 (Role: PI). |
| 2017-2022 | National Data Archive on Child Abuse and Neglect. Administration for Children and Families. \$5,260,782 (Role: PI 2017-2020; Co-PI 2020-2022). |
| 2017-2018 | “Linking NYC Administrative Data to Estimate Parental Incarceration’s Effects on Children.” Center for the Study of Inequality at Cornell University. \$68,825 (Role: PI). |
| 2017-2018 | “Linking NYC Administrative Data to Estimate Parental Incarceration’s Effects on Children.” Russell Sage Foundation. \$35,000 (Role: PI). |
| 2017-2018 | “Preliminary Analysis of Caseworkers in NCANDS/AFCARS.” Casey Family Programs. \$125,00 (Role: PI). |
| 2017 | Cornell Graduate and Professional Students Association Faculty Award for Excellence in the Teaching, Advising, and Mentoring of Graduate and Professional Students. |
| 2016-2018 | “Geographic Variation in Child Maltreatment and Foster Care Placement.” National Institutes of Health. Eunice Kennedy Shriver National Institute of Child Health and Human Development. \$176,789 (Role: PI). |
| 2016 | “Geographic Variation in Child Maltreatment and Foster Care Placement.” Casey Family Programs. \$50,00 (Role: PI). |
| 2016 | Outstanding Book Award. ASA Inequality, Poverty, and Mobility Section. |
| 2015-2018 | Theme Project on the Causes, Consequences, and Future of Mass Incarceration. Institute for the Social Sciences. Cornell University. \$150,000 (Role: Co-I). |
| 2015-2017 | National Data Archive on Child Abuse and Neglect. Administration for Children and Families. \$1,813,289 (Role: Co-PI). |
| 2015-2017 | Faculty Fellow. Bronfenbrenner Center for Translational Research. Cornell University. |

- 2015-2016 Steering Committee Member. National Academy of Sciences Workshop on Collecting Indicators of Criminal Justice System Involvement on Population Health Data Surveys.
- 2015-2016 “The Physical and Mental Health of Women Attached to Incarcerated Men.” West Coast Poverty Center at the University of Washington. \$20,000 (Role: Co-I).
- 2014-2015 “Paternal Incarceration and Teachers’ Expectations of Students.” Institute for the Social Sciences. Cornell University. \$10,500 (Role: PI).
- 2013 Ruth Shonle Cavan Young Scholar Award from the American Society of Criminology.
- 2013 Distinguished New Scholar Award from the American Society of Criminology’s Division on Corrections and Sentencing.
- 2013-2014 “Using Social Network Analysis for Crime Prevention and Evaluation.” Department of Justice. Office of Justice Programs. \$300,000 (Role: Co-I).
- 2012-2017 Bureau of Justice Statistics Visiting Fellows Program: Criminal Justice. Office of Justice Programs. Department of Justice. \$322,201 (\$112,504 for 2012-2014; \$149,967 for 2014-2016; \$60,000 in 2017). (Role: PI).
- 2012-2013 Junior Faculty Fellowship. Yale University.
- 2012 Summer Research Institute (SRI). National Data Archive on Child Abuse and Neglect (NDACAN). Cornell University.
- 2011-2012 “Redefining Relationships: Explaining the Countervailing Consequences of Paternal Incarceration for Parenting.” National Center for Family and Marriage Research External Grants Program. \$20,000 (Role: PI).
- 2010-2011 “Children of the Prison Boom: Mass Incarceration and the Future of American Inequality.” Presidential Authority Award. Russell Sage Foundation. \$34,633 (Role: Co-I).
- 2009-2010 Emerging Scholars. University of Kentucky Center for Poverty Research (UKCPR).
- 2009-2010 “Imprisonment and (Inequality in) Population Health.” Young Investigator Development Grants Program. University of Kentucky Center for Poverty Research (UKCPR). \$6,133 (Role: PI).
- 2009-2010 “Imprisonment and (Inequality in) Population Health.” Robert Wood Johnson Foundation Health & Society Scholars Small Grants Program. \$15,424 (Role: PI).
- 2008 Outstanding Graduate Student Paper. ASA Crime, Law, and Deviance Section.
- 2008 Dorothy Thomas Award. Population Association of America.
- 2007-2008 Harry Frank Guggenheim Dissertation Fellowship. \$20,000 (Role: PI).
- 2007 Finalist. Robert Wood Johnson Foundation Scholars in Health Policy Research Program. (Declined in order to interview for the Robert Wood Johnson Foundation Health & Society Scholars Program.)
- 2007 Outstanding Graduate Student Paper. ASA Children and Youth Section.
- 2007 Outstanding Graduate Student Paper. ASA Sociology of Family Section.

2006 Marvin Bressler Graduate Student Teaching Award. Princeton University Department of Sociology.

SELECTED PRESENTATIONS (* INDICATES INVITED; † INDICATES SCHEDULED)

LIFE AFTER SOLITARY CONFINEMENT: *College of Human Ecology Employee Rejuvenation (CHEER) at Cornell University* * (2019).

INDEBTED BY PROXY: HOW WOMEN AND CHILDREN ARE FARING UNDER THE CARCERAL STATE: *SUNY-Cortland* * (2019).

WHAT PERCENTAGE OF AMERICANS HAVE EVER HAD A FAMILY MEMBER INCARCERATED? EVIDENCE FROM THE FAMILY HISTORY OF INCARCERATION SURVEY (FAMHIS): *Vera Institute of Justice* * (2019); and *Universidad Carlos III de Madrid* * (2019).

WHY (AND MAYBE HOW) FOSTER CARE INTERVENTIONS COULD DECREASE JUSTICE SYSTEM INEQUALITY: *Conference on Multisystem Approaches to Help Keep Children Out of the Justice System at Princeton University* * (2018).

HOW THE AFCARS AND NCANDS CAN PROVIDE INSIGHT INTO LINKED ADMINISTRATIVE DATA: *Penn State Child Maltreatment Solutions Network Conference* * (2018).

CHILDHOOD IN AN ERA OF MASS FORCED PARENTAL ABSENCE: *American Sociological Association* * (2018).

CUMULATIVE PREVALENCE OF CHILD PROTECTIVE SERVICES CONTACT FOR AMERICAN CHILDREN: *Keynote at Children's Data Network Convening on the Child Welfare System at the University of Southern California* * (2018).

USING LINKED ADMINISTRATIVE DATA TO ESTIMATE THE EFFECTS OF PARENTAL INCARCERATION ON BIRTH OUTCOMES: *Duke University Population Research Institute* * (2020); *University of North Carolina School of Medicine* * (2018); and *Population Association of America* (2018).

MASS INCARCERATION, PUBLIC HEALTH, AND WIDENING INEQUALITY IN THE US: *Weill Cornell Medicine Clinical & Translational Science Center* * (2019), *Harvard Medical School* * (2017), and *Yale Medical School* * (2017).

WHAT MASS INCARCERATION MEANS FOR AMERICAN CHILDREN: *The Policy Lab at Yale University* * (2017).

THE PAST, PRESENT, AND FUTURE OF THE NATIONAL DATA ARCHIVE ON CHILD ABUSE AND NEGLECT: *North American Data Documentation Initiative Conference* (2017).

(HOW) CAN FOSTER CARE DIMINISH INEQUALITY IN CHILDREN'S JUSTICE SYSTEM CONTACT?: *Future of Children Conference at Princeton University* * (2017).

THE LONG-TERM CONSEQUENCES OF SOLITARY CONFINEMENT: *Duke University Department of Sociology* * (2019), *University of California, Berkeley Demography Brown Bag Series* * (2019), *Northwestern University* * (2019), *University of North Carolina School of Social Work* * (2018), *Vanderbilt University Department of Sociology* * (2018), *Washington University St. Louis Department of Sociology* * (2017), *Population Research Center Brown Bag at the University of Texas at Austin* * (2017), *Notestein Seminar Series in the Office of Population Research at Princeton University* * (2017), *University of Chicago Population Research Center* * (2017), and *Center for the Study of Inequality at Cornell University* (2017).

CUMULATIVE PREVALENCE OF HAVING A CHILD PROTECTIVE SERVICES INVESTIGATION BY AGE 8 FOR US CHILDREN: *International Family Violence and Child Victimization Research Conference* (2016).

WHAT DO WE WANT TO MEASURE WHEN WE MEASURE CRIMINAL JUSTICE CONTACT?: *National Academy of Sciences Workshop on Improving Collection of Indicators of Criminal Justice System Involvement in Population Health Data Programs* * (2016).

PATERNAL INCARCERATION AND TEACHER EXPECTATIONS OF STUDENTS: *Epidemiology Seminar Series at Brown University's School of Public Health* * (2016), *Jensen Lecture Series at Duke University's Department of Sociology* * (2016), *Institute on Health Economics, Health Behaviors and Disparities at Cornell University* * (2016), *American Sociological Association* * (2016), *Summer Lecture Series at the Silver Bay YMCA* * (2016), *Youth Development Research Update at the Bronfenbrenner Center for Translational Research at Cornell University* * (2016), *Rockwool Foundation Research Unit* * (2016), *Research for Reform Conference in the Malcolm Wiener Center for Social Policy at Harvard University* * (2016), *Institute of Human Development and Social Change at New York University* * (2016), *Institute for Research on Poverty at the University of Wisconsin* * (2016), and *Department of Human Development at Cornell University* * (2016).

PATERNAL INCARCERATION AND CHILDREN'S RISK OF BEING CHARGED BY EARLY ADULthood: *McCourt School of Public Policy at Georgetown University* * (2017) and *Population Association of America* (2016).

FAMILY LIFE IN AN ERA OF MASS INCARCERATION: *College of Human Ecology Employee Rejuvenation at Cornell University* * (2015) and *Clarke Forum for Contemporary Issues at Dickinson College* * (2015).

THE EFFECT OF LOWERING WELFARE PAYMENT CEILINGS ON CHILDREN'S RISK OF OUT-OF-HOME PLACEMENT: *Institute for Research on Poverty at the University of Wisconsin* * (2015).

VARIATION IN THE IMPRISONMENT-MORTALITY RELATIONSHIP: *Eastern Sociological Society* * (2015).

GEOGRAPHIC VARIATION IN THE CUMULATIVE RISK OF MALTREATMENT AND FOSTER CARE PLACEMENT: *Casey Family Programs* * (2017), *Duke University Population Research Institute* * (2016), *Center for Demography and Ecology at the University of Wisconsin* * (2016), *Stice Lecture Series, Department of Sociology, and Center for Statistics and the Social Sciences at the University of Washington* * (2015), *Rockwool Foundation Research Unit* * (2015), *Columbia University Department of Sociology* * (2015), *Office of Academic Diversity Initiatives at Cornell University* * (2015), *Emory University Department of Sociology* * (2015), *Loyola University* * (2015), *Inequality and Social Policy Seminar Series at Harvard University* * (2014), and *Center for the Study of Inequality at Cornell University* (2014).

COLLATERAL CONSEQUENCES OF MASS INCARCERATION FOR CHILDREN, ADULT WOMEN, AND COMMUNITIES: *Congressional Briefing on the Collateral Consequences of Mass Incarceration* * (2014).

IMPLICATIONS OF SOCIOLOGY'S METHODOLOGICAL BREADTH: *Keynote Address at Kent State University's Alpha Kappa Delta (AKD) Honors and Awards Banquet* * (2014).

GROWTH AND INEQUALITY IN THE CUMULATIVE RISK OF PATERNAL AND MATERNAL IMPRISONMENT: *Conference on Parental Incarceration in the United States: Bringing Together Research and Policy to Reduce Collateral Costs to Children at the White House* * (2013).

IS INCARCERATION A POVERTY TRAP: *Administration for Children and Families Welfare Research and Evaluation Conference* * (2013).

EFFECTS OF MASS IMPRISONMENT ON WOMEN AND CHILDREN: *Virginia Department of Probation and Parole Annual Conference* * (2013).

MORTALITY AND MORBIDITY IN RECENTLY RELEASED PRISONERS: *Virginia Department of Probation and Parole Annual Conference* * (2013).

USING MASS INCARCERATION AND THE AFFORDABLE CARE ACT TO IMPROVE THE HEALTH OF THOSE WHO AREN'T INCARCERATED: *Institute of Medicine and National Academy of Sciences Workshop on Incarceration and Health* * (2012).

POSITIVE, NEGATIVE, OR NULL? THE EFFECTS OF MATERNAL INCARCERATION ON CHILDREN'S BEHAVIORAL PROBLEMS: *Division of Prevention and Community Research at Yale University* * (2013), *Pennsylvania State University Department of Sociology* * (2013), *The Reentry Council Research Network, the Women and Reentry Steering Committee, and the Children of Incarcerated Parents Working Group of the Federal Interagency Reentry Council Staff Working Group* * (2013), *American Sociological Association* (2013), *Population Association of America* (2013), *Rutgers University School of Criminal Justice* * (2013), *Fragile Families and Child Wellbeing Working Group* * (2012), *Jerry Lee Center of Criminology at the University of Pennsylvania* * (2012), and *Department of Policy Analysis and Management at Cornell University* * (2012).

CHILDREN OF THE PRISON BOOM: MASS INCARCERATION AND THE FUTURE OF AMERICAN INEQUALITY: *Cornell Cooperative Extension New York City* * (2018), *Summer Lecture Series at the Silver Bay YMCA* * (2016), *Foreverfamily Atlanta* * (2015), *Bronfenbrenner Center for Translational Research at Cornell University* * (2015), *Opening Keynote Address at Delaware Center for Justice's Annual Meeting* * (2014), *Symposium on Squandered Resources: Incarceration's Consequences, Costs, and Alternatives at Johns Hopkins University School of Public Health* * (2014), *Reversing Trajectories Conference at the University of Kentucky* * (2014), *Kent State University Department of Sociology* * (2014), *SUNY Albany Justice and Multiculturalism Project* * (2014), *Rutgers University Workshop on Quantitative Applications in Sociology* * (2014), *Family Centered Services of Connecticut* * (2013), *Edward Zigler Center in Child Development and Social Policy at Yale University* * (2012), *Social Welfare Series on Inequality and Dispossessed Lives Left Behind at the CUNY Graduate Center* * (2012), *Bucknell University Social Science Colloquium* * (2012), *Department of Sociology at the University of Oslo* * (2012), *Rockwool Foundation Research Unit* * (2012), and *Justice Policy Center at the Urban Institute* * (2012).

COMBINING DESCRIPTIVE AND CAUSAL METHODS TO STUDY INEQUALITY (A WORKSHOP): *Social Science Research Center Berlin (WZB)* * (2012).

CUMULATIVE RISKS OF FOSTER CARE PLACEMENT FOR U.S. CHILDREN, 2000-2011: *Harvard School of Public Health's Maternal and Child Health Seminar* * (2014), *McGill University Centre for Population Dynamics* * (2014), *Association for Public Policy Analysis and Management* (2013), *Population Association of America* (2013), *Population Studies Center at the University of Pennsylvania* * (2013), *Center for Research on Inequalities and the Life Course (CIQLE) at Yale University* (2012), *Population Studies Center (PSC) at the University of Michigan* * (2012), *Social Science Research Center Berlin (WZB)* * (2012), *Department of Education at Aarhus University* * (2012), and *Rockwool Foundation Research Unit* * (2012).

FATHERS AND FATHERING IN THE ERA OF MASS INCARCERATION: *Fathers and Fathering in Contemporary Contexts at the National Center for Family and Marriage Research* * (2012).

DESPAIR BY ASSOCIATION? THE MENTAL HEALTH OF MOTHERS WITH CHILDREN BY RECENTLY INCARCERATED FATHERS: *Eastern Sociological Society* * (2012), *Population Association of America* (2011), and *Yale Health Economics Workshop* * (2011).

PARENTAL INCARCERATION, CHILD HOMELESSNESS, AND THE INVISIBLE CONSEQUENCES OF MASS IMPRISONMENT: *Detaining Democracy Conference at the Institution for Social and Policy Studies (ISPS) at Yale University* * (2012), *American Sociological Association* (2012), *American Society of Criminology* (2011), *Fragile Families and Child Wellbeing Working Group* (2011), *Population Association of America* (2011), *Center for Research on Inequalities and the Life Course* (2011) at Yale University, *Eastern Sociological Society* (2011), *Duke University Population Research Institute (DuPRI)* * (2010), *Yale Health Economics Workshop* * (2010), *American Bar Association Criminal Justice System Sentencing and Reentry Institute and Criminal Justice Legal Educators Colloquium* * (2010), and *Law and Society Association* (2010).

IMPRISONMENT AND (INEQUALITY IN) POPULATION HEALTH: *University of Kentucky Center for Poverty Research Small Grants Conference* * (2010), *Robert Wood Johnson Foundation Health & Society Scholars Annual Meeting* * (2010), *Population Association of America* (2010), and *Center for Social Epidemiology and Population Health (CSEPH) at the University of Michigan* * (2010).

INCARCERATION AND POPULATION HEALTH IN WEALTHY DEMOCRACIES: *Department of Policy Analysis and Management and Cornell Population Center at Cornell University* * (2014), *Mailman School of Public Health at Columbia University* * (2013), *Robert Wood Johnson Foundation Health & Society Scholars Symposium on Mass Incarceration at the University of Michigan* * (2013), *American Society of Criminology* (2012), *Swedish Institute for Social Research (SOFI) at Stockholm University* * (2012), *Community Disruption and HIV Risk Conference at American University's Center on Health, Risk, and Society* * (2012), *Neil A. Weiner Research Speaker Series at Vera Institute of Justice* * (2012), *Urban Social Processes Workshop at Harvard University* * (2012), *Incarceration Working Group at the Columbia Population Research Center (CPRC) at Columbia University* * (2012), *Population Association of America* (2010), and *Center for Research on Inequalities and the Life Course (CIQLE) at Yale University* * (2010).

IMPRISONMENT AND INFANT MORTALITY: *Incarceration and Health Disparities Symposium at Harvard Medical School, Brigham and Women's Hospital* * (2011), *University of Kentucky Center for Poverty Research* * (2010), *Child Psychiatric Epidemiology Group at Columbia University* * (2009), *University of Michigan Population Studies Center* * (2009), *Research Committee 28 (RC28) of the International Sociological Association* (2009), *Criminology and Population Dynamics Workshop* (2009), *Robert Wood Johnson Foundation Health & Society Scholars Annual Meeting* * (2009), *Population Association of America* (2009), and *Bowling Green State University Center for Family and Demographic Research* * (2009).

PATERNAL INCARCERATION AND CHILDREN'S PHYSICALLY AGGRESSIVE BEHAVIORS: EVIDENCE FROM THE FRAGILE FAMILIES AND CHILD WELLBEING STUDY: *American Sociological Association* (2008), *Population Association of America* (2008), *Aage Sorensen Memorial Conference at Harvard University* (2008), and *Fragile Families and Child Wellbeing Working Group* (2007).

PARENTAL IMPRISONMENT, THE PRISON BOOM, AND THE CONCENTRATION OF CHILDHOOD DISADVANTAGE: *The Problem of Punishment Conference at the University of Virginia* * (2009), *University of North Carolina Department of Sociology* * (2008), *University of Minnesota Department of Sociology* * (2008), *University of Massachusetts Department of Sociology* * (2008), *Yale University Department of Sociology* * (2008), *Office of Population Research Notestein Seminar Series* (2007), *American Sociological Association* (2007), *Population Association of America* (2007), *Fragile Families and Child Wellbeing Working Group* (2007), and *Probing the Penal State Conference at the University of California-Berkeley* * (2006).

TEACHING AND ADVISING (PRE-2020 ACTIVITIES AT CORNELL UNIVERSITY/YALE UNIVERSITY)

INCARCERATION AND INEQUALITY (F2020, Undergraduate).

CONFINEMENT! (S2016, S2017, S2018, Undergraduate).

DEMOGRAPHIC TECHNIQUES (S2015, S2016, S2017, S2018, Graduate).

MASS IMPRISONMENT AND URBAN FAMILY LIFE (S2011, Undergraduate).

ORANGE IS THE NEW BLACK (F2014, F2015, F2016, Undergraduate).

PUNISHMENT AND INEQUALITY (F2010, F2011, F2013, Undergraduate).

SENIOR ESSAY AND COLLOQUIUM FOR NONINTENSIVE MAJORS (S2011, Undergraduate).

STATS I (F2011, Graduate).

STATS II (S2012, Graduate).

VIEWS FROM THE NEWS (S2016, Undergraduate).

WORKSHOP IN ADVANCED SOCIOLOGICAL WRITING AND RESEARCH I (F2013, Graduate).

WORKSHOP IN ADVANCED SOCIOLOGICAL WRITING AND RESEARCH II (S2014, Graduate).

SENIOR THESES ADVISED: Shanica Baynes (2010-2011, Sociology), LaTisha Campbell (2011-2012, Sociology), Tony Cheng (2011-2012, Political Science, Thesis Awarded the Percival Wood Clement Prize), Paulo Coehlo Filho (2011-2012, Ethics, Politics, and Economics), Sabina Mehmedovic (2011-2012, Sociology), Olivia Schwob (2013-2014, Political Science), Angela Wang (2013-2014, Sociology, Thesis Awarded the Mildred Priest Frank Prize), and Akina Younge (2010-2011, Sociology).

SECOND YEAR PAPER COMMITTEES: Sara Bastomski (2013), Inkwan Chung (2014), Kristin Plys (2011), Michael Sierra-Arevalo (2014), and Pianpian Xu (2012).

FIELD EXAM COMMITTEES: Sara Bastomski (2014) and Marianne Wilson (2011).

DISSERTATION COMMITTEES: Erika Braithwaite (2017, McGill University Department of Epidemiology), Valerio Bacak (2015, University of Pennsylvania Department of Sociology), Bridget Brew (2019, Cornell University Department of Sociology), Caitlin Daniel (2017, Harvard University Department of Sociology), Allison Dwyer Emory (2017 [Co-Chair], Cornell University Department of Sociology), Frank Edwards (2017, University of Washington Department of Sociology), Matthew Lawrence (2014, Yale University Department of Sociology), Erin McCauley (Ongoing [Chair], Cornell University Department of Sociology), Kathleen Powell (2019, Rutgers University School of Criminal Justice), Celene Reynolds (2019, Yale University Department of Sociology), and Youngmin Yi (Ongoing [Co-Chair], Cornell University Department of Sociology).

SERVICE AND OTHER PROFESSIONAL ACTIVITIES

CONSULTING EDITOR: *American Journal of Sociology* (2019-2021)

DEPUTY EDITOR: *Demography* (2017-2019, 2019-2021)
Sociological Perspectives (2020-2022)

EDITORIAL BOARD: *Demography* (2013-2016, 2016-2019)
Law and Society Review (2014-2016)
RSF: Russell Sage Foundation Journal of the Social Sciences (2020-2023)
Social Forces (2014-2017, 2017-2020)
Social Problems (2011-2014)
Social Psychology Quarterly (2016-2018)
Sociological Forum (2016-2018, 2019-2021)

EDITORIAL COMMITTEE: *Epidemiologic Reviews* (2018 issue on Prisoners' Health)

REVIEWER (ABBREVIATED): *American Journal of Epidemiology*, *American Journal of Public Health*, *American Journal of Sociology*, *American Political Science Review*, *American Sociological Review*, *ANNALS of the American Academy of Political and Social Sciences*, *Child Abuse and Neglect*, *Child Maltreatment*, *Children and Youth Services Review*, *Criminology*, *Criminology and Public Policy*, *Demography*, *Du Bois Review*, *Health Affairs*, *JAMA Pediatrics*, *Journal of Economic Literature*, *Journal of Health and Social Behavior*, *Journal of Marriage and Family*, *Journal of Quantitative Criminology*, *Journal of Research in Crime and Delinquency*, *Lancet*, *Lancet Public Health*, *Law and Society Review*, National Academy of Sciences, Engineering, and Medicine (Report on Community-Based Solutions to Promote Health Equity), National Science Foundation, New York University Press, National Institute of Justice, National Institutes of Health, Oxford University Press, *Pediatrics*, *PNAS*, *Public Health Reports*, Robert Wood Johnson Foundation, Russell Sage Foundation, *Social Forces*, *Social Problems*, *Social Psychology Quarterly*, *Social Science and Medicine*, *Social Science History*, *Social Science Research*, *Social Service Review*, *Society and Mental Health*, *Sociological Forum*, *Sociological Science*, *Sociology of Education*, University of California Press, and University of Chicago Press.

MEMBER: American Society of Criminology (Division on Corrections and Sentencing); American Sociological Association (Sections: Children and Youth; Crime, Law, and Deviance; Family; Inequality, Poverty, and Mobility; and Population); and Population Association of America.

| | |
|-----------|--|
| 2019-2020 | Member. ASA Crime, Law, and Deviance Section Nominations Committee. |
| 2019- | Faculty Advisory Board. Cornell University CIPA. |
| 2018-2020 | Co-Chair. Provost's Review of the Social Sciences at Cornell University. |
| 2018-2020 | Member. PAA Dorothy S. Thomas Award Committee. |
| 2018-2019 | Member. ASA Children and Youth Section Distinguished Career Award Committee. |
| 2018-2019 | Chair. Cornell University PAM Faculty Recruitment Committee. |
| 2018-2019 | Member. Cornell University PAM Chair Recruitment Committee. |
| 2018-2019 | Core Faculty. Cornell University CIPA. |
| 2018 | Member. Cornell University Sociology Graduate Awards Committee. |
| 2018 | Scientific Review Panel. NIH (NICHD) CAPSTONE Centers for Multidisciplinary Research in Child Abuse and Neglect (P50). |
| 2018 | PAA Session Organizer. Mass Incarceration and Inequality in the U.S. |
| 2017-2020 | Member. Research Advisory Committee. Cornell University. |
| 2017-2019 | Member. National Science Foundation Sociology Dissertation Advisory Panel. |
| 2017-2019 | Member. Cornell University PAM Undergraduate Curriculum Committee. |
| 2017-2018 | Member. Cornell University PAM Faculty Recruitment Committee. |
| 2017 | Member. Organizational Structures Committee. Provost's Review of the Social Sciences at Cornell University. |
| 2017 | Member. Search Committee. Senior Vice Provost for Research and Vice President for Technology Transfer, Intellectual Property, and Research Policy at Cornell University. |

2017 ASA Inequality, Poverty, and Mobility Session Organizer. Social Exclusion.

2017- Faculty Mentor. McNair Scholars Program.

2016 Scientific Review Panel. NIH (NICHD) Social Sciences and Population Studies A (SSPA).

2016 Scientific Review Panel. NIH (NICHD) CAPSTONE Centers for Multidisciplinary Research in Child Abuse and Neglect (P50).

2016- Crime and Justice Research Alliance.

2016 Member. Cornell University PAM Graduate Admissions Committee.

2016 Chair. Rhodes Postdoctoral Fellow Selection Committee. Cornell Population Center.

2016 Chair. Reception Committee. ASA Section on Children and Youth.

2015- Vera Institute of Justice Research Advisory Board.

2015- Cornell Population Center Advisory Committee.

2015-2019 Cornell University PAM Executive Committee.

2015 Chair. Reception Committee. ASA Section on Children and Youth.

2015 Member. Cornell University PAM Graduate Admissions Committee.

2015 PAA Session Organizer. Demography of Crime and Punishment.

2015 Member. ASC Outstanding Article Committee.

2014-2017 Secretary/Treasurer. ASA Section on Inequality, Poverty, and Mobility.

2014-2017 Faculty Fellow. Court-Kay-Bauer Hall.

2014-2017 Co-Director. Finger Lakes Regional Branch of the Scholars Strategy Network (SSN).

2014-2016 Council Member. ASA Section on Children and Youth.

2014-2016 Co-Chair. Cornell University PAM Faculty Recruitment Committee.

2014-2015 Advisory Committee. National Data Archive on Child Abuse and Neglect.

2014- Affiliated Researcher. Children's Data Network.

2014 Member. William Pickens Prize Committee.

2014 PAA Session Organizer. Incarceration and Labor Market Outcomes.

2014 PAA Discussant. Families Living Apart in the United States.

2013-2015 Co-Director. Criminal Justice Working Group of the Scholars Strategy Network (SSN).

2013-2014 ASC Division on Corrections and Sentencing Awards Committee.

2013-2014 ASA Sociology of Population Section Committee on Nominations.

2013-2014 Yale University Sociology Department Graduate Student Admissions Committee.

2013-2014 Organizer. Center for Research on Inequalities and the Life Course (CIQLE) Workshop.

2013 ASA Sociology of the Family Section Graduate Student Paper Award Committee.

2013 ASA Crime, Law, and Deviance Session Organizer. Social Consequences of Incarceration.

2013 ASA Crime, Law, and Deviance Program Committee.

2013 ASA Session Organizer. Punishment and Inequality.

2012 Invited Participant. Workshop on Health and Incarceration. Co-Sponsored by the Institute of Medicine's Board on the Health of Select Populations and the National Academy of Sciences Committee on Law and Justice.

2012 ASC Session Organizer. Author Meets Critics for Becky Pettit's *Invisible Men*.

2012 Commentator. Yale Symposium on Inequality.

2012 ASA Discussant. Stratification.

2012 Member. Mildred Priest Frank Memorial Prize in Sociology (1984) Committee.

2011- Member. Scholars Strategy Research Network (SSN).

2011- Big Think Delphi Fellow (<http://bigthink.com/>).

2011-2014 Co-Director. New Haven Regional Branch of the Scholars Strategy Network (SSN).

2011-2014 Yale University Summer Undergraduate Research Fellowship (SURF) Program.

2011-2012 Yale University Department of Sociology Faculty Recruitment Committee.

2011-2012 Yale University CIPE Research Fellowships for Juniors Committee.

2011 ASC Discussant. New Longitudinal Data on Parental Incarceration and Child Wellbeing.

2011 PAA Session Organizer. Demography of Punishment and Demography of Crime.

2010-2014 Faculty Fellow. Ezra Stiles Residential College. Yale University.

2010-2012 Faculty Mentor. Mellon Mays Undergraduate Fellowship Program (MMUF). Yale University.

2010-2012 Organizer. Center for Research on Inequalities and the Life Course (CIQLE) Workshop.

2010-2011 Undergraduate Affairs Committee. Yale University.

2009 ASA Sociology of the Family Section Graduate Student Paper Award Committee.

2006-2007 Graduate Student Advisory Committee. Princeton University Department of Sociology.

Exhibit E

Congress of the United States
Washington, D.C. 20515

April 6, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
Small Business Administration
409 3rd Street SW
Washington, D.C. 20416

Dear Secretary Mnuchin and Administrator Carranza:

We are writing to express concern with the Business Loan Program Temporary Changes; Paycheck Protection Program Interim Final Rule, 13 CFR Part 120 (hereinafter, "Rule"). The Rule contains many restrictions that were not only not included in the CARES Act, they were not intended by Congress at all.

Specifically, Congress did not intend for people who have been released from prison and followed the law to start or help start a business to be prevented from getting the capital they need to save it. Congress certainly did not intend to doom the businesses of those who **have not even been convicted at all**. This rule does both those things. Specifically, section III(2)(b)(iii) states:

"An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years"

This provision is contrary to law, public policy, and common sense.

Congress and the Trump Administration have made criminal justice reform a national priority. Working together in a bipartisan fashion, the First Step Act was passed to allow people to be released from prison where appropriate, establish programs to reduce recidivism, and support the formerly incarcerated as they return to their communities. Now, the U.S. Department of the Treasury and the Small Business Administration seem to have designed, out of thin air, a rule that erases many of those gains and expands the collateral consequences of incarceration in the middle of a crisis.

Gainful employment and the ability to make ends meet are the foundation for reducing recidivism. Many of the formerly incarcerated receive training while serving their

sentence to become barbers, welders, plumbers, and automotive technicians. Still others enter into less skilled trades such as landscaping and housekeeping. Some even become the pastors of their own small churches. One thing these professions have in common is that they lend themselves to independent contracting and business ownership. We should be encouraging and supporting the efforts of people to start their own, lawful businesses, not leaving them exposed during a pandemic.

Excluding a class of business owners from the Paycheck Protection simply for their status is not only contrary to law, it is wrong. The rule is so far reaching that simply having a sibling in a family-owned business charged with an unrelated crime would sink the entire business. Surely, this is not the desired result of Treasury or the Small Business Administration?

The Paycheck Protection Program was designed by Congress to give all small businesses a lifeline. The employees of the formerly incarcerated are just as entitled to remaining on payroll as other Americans. The CARES Act was designed to take care of ALL Americans. We hope you will update the regulations to reflect that.

Sincerely,



Cedric L. Richmond
Member of Congress

Karen Bass
Member of Congress

Sean Casten
Member of Congress

Raül M. Grijalva
Member of Congress

Hakeem Jeffries
Member of Congress

Eleanor Holmes Norton
Member of Congress

Ayanna Pressley
Member of Congress

Jan Schakowsky
Member of Congress

Darren Soto
Member of Congress

David Trone
Member of Congress

Bonnie Watson Coleman
Member of Congress

Exhibit F

United States Senate

WASHINGTON, DC 20510

April 8, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of Treasury
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
Washington, D.C. 20416

Dear Secretary Mnuchin and Administrator Carranza,

I have been hearing from small business owners across Oregon who have been hurt and frustrated by the problems surrounding the implementation of the Paycheck Protection Program (PPP) of the CARES Act. While I agree that we must continue to support this program through an increase of additional funds, we cannot do so in good conscience without addressing many of the issues that we've seen thus far. As we move forward with the PPP, I call on your agencies to address the following issues:

- (1) Banks have been prioritizing bigger, more lucrative customers for priority access to the program, which was not the intent of this program. A portion of the funding should be set aside for Community Development Financial Institutions (CDFI); for businesses with fewer than 10 employees; for businesses with fewer than 50 employees; and for sole proprietors and independent contractors to ensure that smaller organizations are not being overlooked by banks.
- (2) The Small Business Administration (SBA) must clarify that small, community hospitals with 501(c)(3) status are eligible for PPP loans. As non-profit district hospitals they adhere to federal and state requirements for all not-for-profit hospitals, including providing community benefit and charity care.
- (3) The SBA has deemed ineligible any applicant if "[a]n owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years[.]"¹ The breadth of this provision is unconscionable, as it punishes individuals who should be innocent until proven guilty and those who have already served their time and, due to the well-known racial disparities in our justice system, disproportionately disqualifies minority-owned businesses.

¹ 13 CFR Part 120, Business Loan Program Temporary Changes; Paycheck Protection Program,

<https://content.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL.pdf>

- (4) The SBA should clarify that business cooperatives under 500 employees are eligible for PPP loans.
- (5) Small businesses that employ independent contractors should be allowed to apply those contracts to their monthly payroll totals, providing them support to keep these contracts active. In that correction, the SBA must clarify that these independent contractors, should they hold multiple contracts, would not be eligible to then apply for PPP for that contract, but could apply to compensate for the loss of other contracts.
- (6) The SBA and Department of Treasury must provide support for lenders as well, providing authorization details, details for note, and details on the secondary market, so banks engaged in lending understand expectations from regulators.
- (7) Lastly, the SBA must clarify that all applicants can benefit from these funds retroactively, even if their loan processing takes longer than the eight weeks designated by the SBA.

The shortcomings in the current implementation of PPP are all too evident. We have an opportunity to correct these shortcomings, and we must seize that opportunity.

Sincerely,

A handwritten signature in blue ink, reading "Jeffrey A. Merkley". The signature is stylized with a large initial "J" and a prominent "M".

Jeffrey A. Merkley
United States Senator

Exhibit G

April 30, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
Small Business Administration
409 3rd Street SW
Washington, D.C. 20416

Dear Secretary Mnuchin and Administrator Carranza:

We write to request that the Small Business Administration (SBA) revise its Interim Final Rule for the Paycheck Protection Program (PPP) so that it properly reflects Congress and the Administration's support for second chances following a record of bipartisan criminal justice reforms in Congress dating back more than a decade. The rule should not deny assistance to people with criminal records who have turned their lives around, started a small business, created jobs and contribute to their communities.

During the month of April, we celebrate Second Chance Month, which exists to raise awareness of the collateral consequences of a criminal conviction, and unlock second-chance opportunities for people who have paid their debt to society to become contributing citizens. The President and Congress have worked together in the past to support individuals who have paid their debt to society and are re-entering their communities.

We believe that policies should support second chances. This was most recently evident in the enactment of the Fair Chance Act in 2019, which opened federal government work to people with criminal records, and the overwhelming bipartisan vote in 2018 for the First Step Act, which provided for important correctional and sentencing reforms. Importantly, this legislation reauthorized the Second Chance Act, which provides funding to state and local reentry programs.

We applaud the SBA's efforts to quickly provide small business owners across the country with relief so they can continue to pay their employees and combat the adverse economic effects of this pandemic. However, the new restrictions placed upon small businesses with partial owners who have been involved in the criminal justice system will only hurt the economy, and further diminish the workforce and the tax base they generate.

Specifically, we are concerned about the following restriction contained within 13 CFR Part 120 section III(2)(b)(iii):

"An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by

which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years.”

This rule departs from the SBA’s own pre-existing eligibility standards for loans, including its Economic Injury Disaster Loans (EIDLs), and deviates from the Administration’s support for second chances. It also deviates from Administrator Carranza’s prior expression of interest during her nomination process to widen SBA’s footprint in the returning citizen community. The language is overly broad, excluding millions of business owners and their employees from much-deserved and much-needed emergency relief. Due to longstanding inequalities in the justice system, the restrictions will also have a disparate impact on communities of color, just as those communities are among the hardest hit by this health and economic crisis.


Through the *CARES Act*, and specifically the PPP, Congress sought to ensure that emergency relief is made available to small businesses that have been negatively impacted by this pandemic. This relief was not intended to exclude business owner who have made mistakes, paid their debt, and turned their lives around. Rather, it was intended to provide a bridge to hard-working American small business owners who are keeping people employed and supporting the essential services that benefit all of us during this unprecedented crisis.

We ask that you revise this harmful, exclusionary Interim Final Rule so that more businesses are eligible for emergency relief, and ensure that SBA rules support second chances, a stronger economy, and safer communities across all of its programs, including EIDL.

Sincerely,

A handwritten signature in blue ink that reads "Rob Portman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Senator Rob Portman

A handwritten signature in black ink that reads "Benjamin L. Cardin". The signature is written in a cursive style, with the first letters of the first and last names being capitalized and prominent.

Senator Benjamin L. Cardin

Exhibit H



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

COMMITTEE ON
FOREIGN AFFAIRS

COMMITTEE ON
HOMELAND SECURITY

COMMITTEE ON
TRANSPORTATION &
INFRASTRUCTURE

CHAIRMAN, SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS,
AND EMERGENCY MANAGEMENT

May 19, 2020

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd St, SW
Washington DC 20416

Dear Administrator Carranza,

As the Small Business Administration (SBA) continues to update rules and guidance for the distribution of funds appropriated for the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loan (EIDL) Advance, I request that you clarify your position on how the SBA is using applicants' criminal history to determine loan eligibility.

The most recent guidelines issued by your agency state that any applicant who has been, "convicted; pleaded guilty; pleaded nolo contendere; been placed on pretrial diversion; or been placed on any form of parole or probation (including probation before judgment)," in the last five years is ineligible for PPP assistance. It is imperative that you clarify whether or not applicants who fall into one of these categories, but have served their time or completed their punitive requirements before submitting their application, will be deemed ineligible. Furthermore, I urge you to specify whether or not those applicants whose felony charges never led to a conviction, but instead were dismissed after completion of pretrial diversion, will be denied access to PPP assistance.

Thus far, the SBA has failed to provide any sort of reasoning for requiring applicants to indicate whether they have any history of a criminal offense other than a minor vehicle violation. I request that you provide a detailed explanation as to how criminal history is being used to determine distribution of the \$10,000 EIDL Advances.

One in three Americans has a criminal record. Denying assistance to rehabilitated citizens who have served their sentences and contributed to the economy is unjust and harmful to our nations' recovery from this pandemic. Without access to these programs, many of these businesses will be forced to close and their employees will lose their jobs.

DINA TITUS
MEMBER OF CONGRESS
1ST DISTRICT NEVADA



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

COMMITTEE ON
FOREIGN AFFAIRS
COMMITTEE ON
HOMELAND SECURITY
COMMITTEE ON
TRANSPORTATION &
INFRASTRUCTURE

CHAIRWOMAN, SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS,
AND EMERGENCY MANAGEMENT

With this in mind, I ask that the SBA issue specific guidance on how criminal history is being used in the distribution of congressionally appropriated assistance.

Sincerely,

Dina Titus
Member of Congress

Also signed by:

Adam Smith
Alcee L. Hastings
Barbara Lee
Bill Foster
Danny K. Davis
David Cicilline
David Trone
Deb Haaland
Earl Blumenauer
Eliot L. Engel
Jan Schakowsky
Marcia L. Fudge
Mike Doyle
Rashida Tlaib
Steven Horsford

Exhibit I



April 20th, 2020

The Honorable Steven Mnuchin
Secretary of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Mitch McConnell
Majority Leader of the United States Senate
Washington D.C. 20515

The Honorable Jovita Carranza
US Small Business Administration
409 3rd St, S.W.
Washington D.C. 20416

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20510

Dear Secretary Mnuchin, Administrator Carranza, Leader McConnell and Speaker Pelosi:

The United States of America boasts more than 30.2 million small businesses that employ more than 47.5 percent of the private workforce. But as we embark on a second month of quarantine, America's small businesses face unprecedented peril. Many have been forced to shutter their operations leaving them no choice but to lay off their workforce.

We are grateful for the work that has gone into the Paycheck Protection Program ("PPP"), which is serving as a lifeline for America's entrepreneurs. Oversight, transparency, and safeguards must be put in place to ensure that every dollar directed to small business owners to make payroll is done so responsibly.

However, we are concerned that language incorporated into the Interim Final Rules governing how the PPP should operate creates a de facto exclusion for those entrepreneurs who have been justice-involved. These people have staked their own claim by creating businesses that deliver value, employ hundreds of thousands, and provide a pathway to re-entering society. By excluding people who have made mistakes unrelated to the SBA, and put their past behind them, we harm their businesses, employees and customers, while failing to recognize their successful rehabilitation. Specifically, Section III, 2(b), iii, of the Interim Final Rule excludes businesses if:

[a]n owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years...

Such a restriction was not included in the statute authorizing the PPP and it need not be part of the Interim Final Rule.

We understand that people currently serving a period of incarceration have no need for assistance from the PPP. Beyond that, however, the regulation is overbroad. Applicants with criminal backgrounds should be considered on their merits and given individual consideration rather than precluded categorically. The disqualifiers become even more problematic when they are applied to those whose compensation is reported on an IRS Form-1099 rather than as a stand-alone business.

Questions 5 & 6 of the [application](#) itself compounds the problem even further. First, it appears to disqualify any owner (not just the owner with the criminal record) from receiving these benefits. Second, and most importantly, it re-defines conviction to include a pretrial diversion, or deferred adjudication.

Justice-involved people make up a higher percentage of independent contractors and small business owners, precisely because of their backgrounds. In short, many turn to entrepreneurship because traditional avenues of employment are foreclosed to them.

Given that 1 in 3 Americans have some criminal record, the PPP's Interim Final Rule will unduly affect a significant percentage of small business owners and entrepreneurs, not to mention their employees and their families. Rather than penalize them, the Administration should take a position consistent with President Trump's work to improve prospects for re-entry for those who have made mistakes and seek to rejoin society as contributing members.

Justice-involved people who have overcome the odds and successfully started businesses should be recognized as successes. But at a minimum, they should not continue to be penalized for having a criminal history, particularly when that history bears no relation to their business operations. In short, they should not be excluded from the PPP.

We ask that the Administration tailor the Final Interim Rule to reflect common-sense. Unless the criminal record at issue is directly related to fraud of federal programs or past violations of SBA rules and regulations, it should not be relevant to qualifying for assistance under the PPP. Abandonment of these small businesses – and their employees – in a time of national economic crisis is not an acceptable outcome for our entrepreneurs, their workers, or the economy as a whole.

Eighteen months ago, President Trump signed the FIRST STEP Act to provide for second chances and a pathway to economic success for those who have made mistakes and we hope that the Small Business Administration will take this into account.

Respectfully,



Mark V. Holden
Americans for Prosperity



Ronald J. Lampard
ALEC Action



Grover Norquist
Americans for Tax Reform



David Safavian
American Conservative Union



Timothy Head
Faith & Freedom Coalition



Jason Pye
Freedom Works



Heather Rice-Minus
Prison Fellowship



Derek Cohen
Right on Crime



Arthur Rizer
R Street

Exhibit J

Joint Statement on COVID-19 Small Business Loans: End Criminal Records Restrictions

By CSG Justice Center Staff

APRIL 16, 2020

“As Congress considers providing additional stimulus and support to small businesses, we urge the U.S. Small Business Administration to remove any policies that restrict or disqualify people with criminal records from accessing emergency loans appropriated by the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act).

We applaud President Trump’s signing of the stimulus package, which includes small business loans to provide financial relief to businesses and their employees who are struggling to keep afloat during the pandemic. However, as it stands, these loan programs exclude some small business owners who have criminal records, endangering their economic welfare as well as that of the people they employ.

For example, the Paycheck Protection Program—which provides loans meant to help employers pay their employees during the COVID-19 crisis—denies applicants if they are facing criminal charges or have had a felony conviction in the past five years. The application also includes several questions that make it unclear as to whether other types of criminal records or past involvement with the justice system may prohibit access to these loans.

The CARES Act was designed to provide a helping hand to all those devastated by an indiscriminate pandemic, supplying much-needed assistance to employers and business owners who make up the backbone of our economy. The Small Business Administration’s policies regarding people with criminal records go against the intent of the legislation and the Trump administration’s ongoing support of second chances for people who have served their time.

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Exhibit K

Submitted Via Regulations.gov

May 15, 2020

Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd St, SW
Washington, DC 20416

Re: U.S. Small Business Administration Business Loan Program; Paycheck Protection Program Interim Final Rule, No. SBA-2020-0015, RIN 3245-AH34

Dear Administrator Carranza:

The undersigned organizations offer these comments on the Small Business Administration's ("SBA") interim final rule (the "Rule") implementing the Paycheck Protection Program ("PPP") authorized in the CARES act (Public Law 116-136). *See* 85 Fed. Reg. 20811.

The Rule improperly denies access to the PPP based on a loan applicant's involvement with the criminal legal system. Any small business in which an owner or partial owner of an equity stake of 20 percent or greater has "been convicted of a felony within the last five years," or "is incarcerated, or on probation or parole," is automatically disqualified from SBA assistance. The Rule also excludes any business in which an owner or partial owner is "presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction," -- **even before any alleged crime has been adjudicated**. The Rule's exclusion of individuals who have been accused but not convicted not only unfairly denies businesses this critical lifeline, it also exacerbates our legal system's racial inequity.

The rule is inconsistent with provisions in both the CARES Act and the SBA enabling act. The CARES Act directs the SBA to "ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including... small business concerns owned and controlled by socially and economically disadvantaged individuals..."¹ a mandate that is overtly flouted by the Rule. Similarly, the SBA's enabling act permits (but does not require) the SBA to "verify the applicant's criminal background, or lack thereof,"² and it certainly does not impose the blanket exclusions contained the Rule. Elsewhere in the SBA enabling act, Congress recognized the importance of ensuring equal access to SBA assistance to socially and

¹ Public Law 116-136, § 1102(a)(P)(iv).

² 15 U.S.C. § 636 (a)(1)(B).

economically disadvantaged individuals.³ Voluminous literature has documented the racially and ethnically discriminatory nature of the criminal justice system in the United States,⁴ and it is profoundly disappointing to see this unfair and punitive Rule negate the important goal of reversing this history of discrimination.

The Rule is also inconsistent with recent legislative achievements allowing persons with criminal records who have paid their debt to society to return to their communities as contributing citizens, as in the Fair Chance Act of 2019, which opened federal government work to people with criminal records, and the First Step Act of 2018, which provided for important correctional and sentencing reforms.

To exclude a class of business owners or partial owners from the Paycheck Protection simply on the basis of their past involvement with the criminal justice system or unadjudicated allegations concerning their present involvement is not only contrary to law, it is wrong. The PPP was intended to give **all** small businesses a lifeline to allow them to maintain their employees, not to perpetuate long-standing forms of racial and ethnic discrimination against some of them. The blanket ban punishes employees who are the intended recipients of this relief, based on their employer's interactions with the legal system. We urge you to modify the Rule to reflect that purpose.

We specifically ask that the final rule expressly:

- Eliminate the expanded disqualification of those with any felony conviction in the past five years (not just those serving sentences);
- Remove any requirement to disclose non-conviction records of pre-trial diversion (an agreement between a prosecutor and defendant to meet certain conditions to avoid going to trial) or pre-trial probation;
- Eliminate any requirement to disclose sealed and expunged records, to allow individuals to maintain the confidentiality of their records, as permitted under certain state laws;
- Allow for individualized determinations rather than mandatory disqualifications and allow employers to provide a mitigating explanation if a background check is positive.

³ 15 U.S.C. § 637(a)(5) defines “socially disadvantaged individuals” as “those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.” 15 U.S.C. § 637(a)(6)(A) defines “economically disadvantaged individuals” as “those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.”

⁴ See, e.g., Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System. Report to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance. The Sentencing Project, April 19, 2018. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

Thank you for considering our views.

Sincerely,

National

Campaign for Youth Justice
Fair and Just Prosecution
Fairness, Dignity & Respect for Crime Victims and Survivors
International Cure
Juvenile Law Center
Law Enforcement Action Partnership
National Juvenile Justice Network

Illinois

Chicago Community Bond Fund

Louisiana

Louisiana Center for Children's Rights

Massachusetts

American Civil Liberties Union of Massachusetts
Boston Release Network
Boston University Coalition for Decarceration
Charles Hamilton Houston Institute for Race and Justice
Citizens for Juvenile Justice
Coalition for Effective Public Safety
Coalition for Social Justice
Criminal Justice Policy Coalition
The Criminal Justice Reform Task Force of Congregation Dorshei Tzedek
Crystal Springs
End Mass Incarceration Together (EMIT)
Freitas & Freitas, LLP
GLBTQ Legal Advocates and Defenders
Greater Boston Legal Services CORI & Re-entry Project
Jewish Alliance for Law and Social Action
Jobs NOT Jails
Justice Resource Institute
Massachusetts Communities Action Network
Massachusetts Law Reform Institute
Mental Health Legal Advisors Committee

More Than Words

National Lawyers Guild, Massachusetts Chapter

The Real Cost of Prisons Project

Roxbury Youthworks

Student Collection of Correctional Housing Advocates for Greater Boston

Pennsylvania

Movement Alliance Project

NAACP Pennsylvania State Conference

Washington

Public Defender Association

TeamChild

Exhibit L

May 15, 2020

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
Washington, DC 20416

**Re: U.S. Small Business Administration Business Loan Program; Paycheck
Protection Program Interim Final Rule, No. SBA-2020-0015, RIN 3245-AH34**

Dear Administrator Carranza:

The undersigned organizations offer these comments on the Small Business Administration's recently released Interim Final Rule for the Paycheck Protection Program (PPP) and the Business Loan Program. We urge the SBA to reconsider those provisions of the Rule that discriminate against individuals who have a record of arrest or conviction.

Specifically, we call upon the SBA to modify or rescind provisions of the Interim Final Rule that make individuals ineligible for PPP loans based upon current or prior criminal history, or ongoing criminal proceedings. Under the Rule, any individual who owns 20% or more of the equity of a business applying for a PPP loan is ineligible for that loan if they are presently incarcerated, or on probation or parole, or subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction. Additionally, per this Interim Final Rule as supplemented by the PPP application form, any owner of a business is ineligible for the loan if they have in the last 5 years 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment) in a felony case.

These requirements are needlessly restrictive and unfairly discriminatory and jeopardize thousands of local communities and employees who rely upon these businesses and their owners for employment and services. The intention of the emergency relief programs authorized by the CARES Act is to sustain small businesses that are trying to save the economy by keeping people employed. Eligibility requirements should be relaxed in these circumstances, not heightened as SBA proposes. SBA's new restrictions on eligibility for its loan programs, which already operate to exclude many people with a record, contravene the intent of the CARES Act, and are inconsistent with SBA's more general mandate of encouraging entrepreneurship and expanding access to employment.

A significant number of people with arrest or conviction history have established their own small businesses, since it is frequently difficult for them to secure employment with others. Moreover, these businesses also tend to be more willing to hire employees with a record. Driving them out of business will result in a severe impact on employment of a population that is already disadvantaged in the workplace. People with a record are subject to a myriad of disadvantages in seeking to reintegrate into society, notably in bank lending policies but also in housing, employment, licensing, education, voting, and other areas.

The SBA's restrictions will have an adverse impact on minority business owners and employees, who are arrested and convicted at disproportionately high rates due to institutional racism, ensuring that business owners of color will be disproportionately excluded from critical economic assistance.

The Interim Final Rule and PPP application form present a wholly unsubstantiated departure from prior SBA practice and are in tension with the statutory directives in the CARES Act, which provides that “any business concern ... shall be eligible” for a loan guarantee if it has the requisite number of employees.¹ Even the SBA's pre-existing 7(a) regulations include criminal history disqualifications that, while still troubling, were more narrowly drawn.² The SBA has issued no rationale for its expansion of these mandatory disqualifications to all recent felony convictions, criminal charges of any kind, and a variety of non-conviction dispositions. In summary, the agency's choices are misaligned with Congressional intent regarding eligibility, inexplicably depart from prior practice, and are unsupported by any explanation.

While we call upon the SBA to modify or rescind all of the provisions relating to criminal history in the Interim Final Rule, we urge the SBA to immediately remove the provision disqualifying individuals who have merely been indicted or arraigned for a crime, or who have otherwise not been convicted. Punishing individuals who have not been convicted of wrongdoing in a court of law is fundamentally unfair and jeopardizes the economic well-being of thousands of employers and employees.

We also urge the SBA to rescind the 5-year ineligibility period for individuals convicted of a felony, or who have been placed on pretrial diversion/probation/parole for any crime. To the extent that the SBA has authority to promulgate eligibility requirements for the PPP that are related to a history of arrest or conviction,³ those requirements should be limited to felony convictions for financial fraud from the past 3 years, subject to an individualized assessment and waiver in appropriate cases. This narrowing of potential ineligibility to serious convictions that are directly related to qualification for financial assistance, along with a diminished window, ensures that individuals who were convicted of a crime but have worked to reintegrate into society are not unduly punished for a past offense.

Finally, we urge the SBA not to disqualify people who are currently serving a sentence of parole or probation in the community unless they are within the narrow category of felony financial fraud convictions within the past 3 years. Parolees and probationers should also have an

¹ 15 U.S.C. § 636(a)(36)(D)(i)(emphasis added). *See, e.g., DV Diamond Club of Flint, LLC, et al. v. United States Small Business Administration, et al.*, No. 20-CV-10899, 2020 WL 2315880, at *1 (E.D. Mich. May 11, 2020) and *In re: Roman Catholic Church of the Archdiocese of Santa Fe*, No. 18-13027 T11, 2020 WL 2096113 (Bankr. D.N.M. May 1, 2020); *In re Hidalgo County Emergency Service Foundation*, Case no. 19-20497; Adv. pro. No. 20-2006, 2020 WL 2029252 (Bankr. S.D. Tex., Apr. 25, 2020). As the bankruptcy court stated in *In re Roman Catholic Church*, at *6, “While a borrower's bankruptcy status clearly is relevant for a normal loan program, the PPP is the opposite of that. It is not a loan program at all. It is a grant or support program. The statute's eligibility requirements do not include creditworthiness.”

² 13 C.F.R. § 120.110(n).

³ *See* cases cited in note 1, holding that other SBA exclusions from PPP eligibility were unlawful under the CARES Act.

opportunity to obtain relief, to ensure that their employees will be able to retain their jobs during this ongoing crisis.

At the very least, the SBA should remove the unauthorized additional restrictions on its application form—restrictions not called for in the Interim Final Rule itself—that apply to *any* owners convicted in the last 5 years, not simply those who own 20% or more of the business, as well as those provisions on the application form that exclude people who were placed on pretrial diversion or probation before judgment in the past 5 years.

In summary, we urge the SBA to reconsider and modify discriminatory PPP eligibility rules, which jeopardize workers, local communities, and individuals who have come into contact with the criminal law system but are working to employ local workers and to reintegrate into society.

Sincerely,

American Civil Liberties Union
Center for Law and Social Policy
Church of Scientology, National Affairs Office
Coalition for Juvenile Justice
Collateral Consequences Resource Center
College and Community Fellowship
Community Legal Services
#cut50
Drug Policy Alliance
FreedomWorks
Health in Justice Action Lab
Jewish Council for Public Affairs
Justice Action Network
Justice & Accountability Center of Louisiana
Justice Innovations LLC
National Employment Law Project
National Youth Employment Coalition
NORML
Operation Restoration
Power Coalition for Equality and Justice
PREACH/East Baton Rouge Parish Prison Reform Coalition
Public Interest Law Center
Root & Rebound
Safer Foundation
Treatment Communities of America
Washington Lawyers' Committee for Civil Rights and Urban Affairs

Exhibit M



INSTITUTE FOR JUSTICE
CLINIC ON ENTREPRENEURSHIP

May 15, 2020

Ms. Jovita Carranza
United States Small Business Administration
409 3rd St., SW
Washington, DC 20416

Re: U.S. Small Business Administration Business Loan Program; Paycheck Protection
Program Interim Final Rule, No. SBA-2020-0019, RIN 3245-AH35

Dear Ms. Carranza:

I write to you today on behalf of the Institute for Justice Clinic on Entrepreneurship at the University of Chicago Law School (“IJ Clinic”). The IJ Clinic is a legal clinic that provides free legal assistance, support, and advocacy for low-income entrepreneurs. We are an arm of the Institute for Justice—the national law firm for liberty. Since 1991, IJ has come to the aid of individuals who want to do the simple things every American has the right to do—including owning property, starting and growing a business, speaking freely about commerce or politics, and providing their children with a good education—but can’t because they find the government in their way. Every day at the IJ Clinic, we advocate for Americans who have big dreams and small budgets, people who are starting businesses so they can direct their own destinies, support their families, create jobs, and transform neighborhoods. We are thankful to have the opportunity to share our perspective on the Small Business Association’s (“SBA”) Payroll Protection Program (“PPP”) Interim Final Rule (85 Fed. Reg. 20811) with this comment letter.

Congress created the PPP within the CARES Act¹ to make capital accessible to small businesses that are hemorrhaging money and jobs during the current pandemic. Governmental orders have shut down small businesses, and revenues have evaporated. Yet, the SBA’s Interim Final Rule arbitrarily cuts some American businesses off from emergency funding, leaving them to fail despite their importance to the economy. The Rule thwarts the intent and text of the PPP by (1) excluding businesses with an owner who has interacted with the criminal justice system and (2) limiting loan forgiveness based on an arbitrary requirement to use 75% of the loan amount on payroll. We urge the SBA to reverse these exclusionary provisions.

¹ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020).

1. The Exclusion of Businesses with Owners Who Interacted with the Criminal Justice System Hurts Entrepreneurs, Contravenes the CARES Act, and Defies Criminal Justice Reform Policies.

Section 2(b)(iii) of the Interim Final Rule makes a business ineligible for PPP loans if an individual who owns 20% or more of the company is currently indicted on any criminal charges—felony or misdemeanor—or has been convicted of a felony in the last five years. These exclusions run contrary to the intent and text of the CARES Act, and they have a devastating effect on businesses, communities, and criminal justice reform efforts.

A. Real-world impact of excluding businesses based on an owner's interaction with the criminal justice system

At the IJ Clinic, we have had the honor to work with entrepreneurs with criminal histories, who started businesses to turn their lives around. We have seen close-up that these entrepreneurs strive to build healthy businesses from scratch, so they can build opportunities in their own communities. Jimmie Williams is a terrific example. Jimmie had been in and out of jail since he was a kid. The last time he got out, he determined he had to set a new course for his life, for the sake of his family. He applied to hundreds of jobs but could not get a foothold on an opportunity. When he found out about a used pickup truck for sale in the neighborhood, Jimmie decided that was his chance to make his own job.² “It was easier to start a company than to get a job,” he says. Jimmie and his wife Tiffany have been running Urban Roots Inc., providing snow removal and lawn care, for 12 years now. Their family dinner table became a board room where their kids learned business skills. Their neighbors, in a neighborhood with a high population of returning citizens, took notice and took pride in the growing business. Jimmie made it his mission to tell his old friends, neighborhood schoolchildren, and his employees that it is possible to become an entrepreneur, even if you made mistakes in the past. He hires and mentors other formerly incarcerated people. He also recently became a mentor in the Cook County Department of Corrections. Chicago needs Urban Roots, and other businesses like it, to survive this pandemic. So do the people who work there and the neighbors who utilize Urban Roots’ services and take inspiration from the story. The PPP should not leave businesses like Urban Roots behind.

Yohance Lacour is another admirable client of the IJ Clinic—one of our newest. Yohance learned leatherworking in a prison workshop. He started making leather greeting cards and handbags so that his fellow inmates could send something special to loved ones. When he got home, he was determined to start a new life and use his passion for leatherworking to build something that was entirely his own. He found the Chicago School of Shoemaking and started trading his labor for classes. Soon he became a teacher, and now he is starting his own business selling leather sneakers of his own design.³ He is currently researching the best practices for making masks so that he can provide something essential to his customers during the pandemic.

² Maudlyne Ihejirika, “Entrepreneur of Color Fund Grows to \$9.1 Million, Will Create Jobs on South, West Sides,” Chicago Sun Times, September 29, 2019, <https://chicago.suntimes.com/2019/9/25/20880875/entrepreneurs-of-color-fund-grows-9-1-million-create-jobs-south-west-sides>.

³ Angel Idowu, “Passion for Design Leads to Career in Handmade Leather Goods,” WTTW, January 15, 2020, <https://news.wttw.com/2019/11/25/passion-design-leads-career-handmade-leather-goods>.

As a new business owner, he is starting to discuss possible partnerships with investors who admire his designs and his early success. But the current SBA rules tell those potential investors that SBA loans may not be available to the business and their investment might fail, for reasons completely unrelated to the prospects of the business or Yohance's entrepreneurial potential.

The PPP loans are not just about the owners of small businesses. They are also about the employees, customers, neighborhoods, and business partners of each small business. If a company closes for good because a four-year old conviction for possession of marijuana or a current indictment for driving on a suspended license prevents a business from getting a PPP loan, what do we say to the employees who are left unemployed as a result? Or the customers that lost a favorite local business? Or business partners who invested in a great business, unconcerned about an irrelevant criminal history? Entire networks of people will feel the harm.

So many Americans have a story like Jimmie's and Yohance's.⁴ They are entrepreneurs who are employing workers, creating wealth, and providing goods and services to their communities. PPP loan exclusion could arbitrarily wipe out all that these entrepreneurs have built. The exclusion and its effects are contrary to what Congress intended when it enacted the CARES Act. It will hurt many small businesses that Congress intended to help.

B. Cutting businesses off from PPP loans based on an owner's criminal background contravenes the CARES Act.

The CARES Act expanded eligibility for 7(a) loans and does not allow consideration of a business owner's interaction with the criminal justice system. In a section called "Increased Eligibility for Certain Small Businesses and Organizations", the Act says, "During the covered period, in addition to small business concerns, any business concern, nonprofit organization, veterans organization, or Tribal business concern described in section 31(b)(2)(C) shall be eligible to receive a covered loan if the business concern, nonprofit organization, veterans organization, or Tribal business concern employs not more than the greater of—(I) 500 employees; or (II) if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern, nonprofit organization, veteran's organization, or Tribal business concern operates."⁵

The law continues to say that a lender is deemed to have been delegated the authority of the SBA to make loans "subject to the provisions of this paragraph". The provisions limiting the delegated authority are as follows: "In evaluating the eligibility of a borrower for a covered loan with the terms described in this paragraph, a lender shall consider whether the borrower—

(aa) was in operation on February 15, 2020; and

(bb) (AA) had employees for whom the borrower paid salaries and payroll taxes; or

⁴ A large segment of the U.S. population interacts with the criminal justice system. About one in three Americans had a criminal record as of 2012. See U.S. Bureau of Justice Statistics, Survey of State Criminal History Information Systems, 2012 (Jan. 2014) at Table 1, available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>. 8.1% of Americans had a felony conviction in 2010. Sarah Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948 to 2010*, 54 *Demography* 1795, 1808 (2017).

⁵ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 1102(a)(36)(D)(i)(2020).

(BB) paid independent contractors, as reported on a Form 1099–MISC.”⁶

The CARES Act thus distinguishes PPP eligibility from other federal loan programs. Although the SBA has explicit authority to review criminal background history when considering making a typical 7(a) loan, the law does not include consideration of criminal background history in the delegation of authority to lenders making PPP loans. The law is also meant to provide relief to a greater array of small businesses than other programs. Yet, instead of hewing to the text of the CARES Act and expanding eligibility for PPP loans accordingly, the Interim Rule restricted eligibility even more than the SBA does in other loan programs.⁷

The Interim Final Rule not only requires banks to consider a factor that is not allowed by the CARES Act; it *requires* them to deny loans based on the impermissible consideration. It outright denies crucial funding for businesses to meet payroll based on (i) a single 20% owner’s felony conviction (regardless of relevance) or (ii) even a pending indictment on any criminal charges—felony or misdemeanor (regardless of a presumption of innocence).⁸ This is a blanket denial and is done without any consideration of the relevancy of the transgression (or alleged transgression) to receipt of funds.

Our system presumes a person is innocent until proven guilty, but the Interim Final Rule eviscerates that notion by barring people from loans based on unproven charges. The CARES Act forecloses consideration of either convictions or indictments and expands eligibility beyond eligibility for other federal loan programs. The SBA should remove harsh restrictions based on criminal background from the PPP rules, to keep faith with the text of the CARES Act.

C. The SBA’s rule cuts off people who are trying to earn an honest living, undermining the goals of the PPP and bi-partisan criminal justice reforms advanced by this administration.

Section 2(b)(iii)’s blanket prohibition on lending to businesses with owners who have a past felony conviction is unfair to entrepreneurs who have served their time and started a new life, and it is counterproductive to the justice system’s goal of limiting recidivism.⁹ It also contravenes the work of this Administration to address problematic collateral consequences and recidivism issues by breaking down barriers to economic liberty.

⁶ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 1102(a)(36)(F)(ii)(I) – (II) (2020).

⁷ For example, the 7(m) microloan program looks at whether an applicant has engaged in a crime linked to fraud, directly relevant to a potential loan. In considering the rules and requirements for 7(m) loans, the SBA stated that lowering barriers to loans boosts “successful reentry of formerly incarcerated individuals, who often have difficulty finding steady employment.” 80 Fed. Reg. 34043.

⁸ 85 Fed. Reg. 20812.

⁹ Moreover, because of existing racial disparities within the criminal justice system, these prohibitions could well fall heavier on black and Latino populations. For example, black and Latino men are more likely to face arrest, and 6 times and 3 times more likely to be incarcerated than white men. Gase, Lauren Nichol et al. “Understanding Racial and Ethnic Disparities in Arrest: The Role of Individual, Home, School, and Community Characteristics,” 8 Race Soc Probl. 296 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5509345/>; The Sentencing Project, Fact Sheet: The Trends in US Corrections, p. 5, <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.

Entrepreneurship is often the only or best chance someone has to earn an honest living after interacting with the justice system. People with felony records often face stigma with employers and find it difficult to obtain work, as Jimmie Williams experienced.¹⁰ Moreover, a myriad of occupational licensing laws unnecessarily prohibit Americans with criminal records from pursuing a variety of occupations.¹¹ Given the barriers to working for companies or joining a trade, many people with criminal records turn to entrepreneurship as a way to earn a living and get their lives on track.¹² By denying PPP loans to businesses owned by people with criminal records, the Interim Final Rule risks decimating companies built by people who have, in the process of building their companies, also rebuilt their own lives.

Entrepreneurship enables those with criminal records to engage in honest enterprise and pursue their dreams as free, law-abiding members of society instead of turning back to criminal enterprises. Indeed, employment and entrepreneurship are key to reducing the risk of recidivism.¹³ It is irresponsible to cut off avenues for success for those who worked hard to create their own jobs. This is especially important in the current economic crisis.¹⁴ We should be doing all we can during this time to increase economic freedom so people can sustain lawful employment for themselves and others.

President Trump's administration, Congress, and most state governments have recognized that formerly incarcerated people's freedom to find or create employment is critical to the nation's economic and social well-being. President Trump created the Federal Interagency Council on Crime Prevention and Improving Reentry and ordered that it is the policy of the United States to prioritize efforts to reduce recidivism.¹⁵ The 2020 budget dedicated resources to programs for occupational training, ease of re-entry, and connection with employment for

¹⁰ See Devah Pager & Bruce Western, *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men*, NCJRC (October 2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/228584.pdf>.

¹¹ See Michelle N. Rodriguez & Beth Avery, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records*, NELP (April 2016), <https://s27147.pcdn.co/wp-content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.

¹² See, for example, Kevin Davis, "Formerly incarcerated people are building their own businesses and giving others second chances," ABA Journal, July 1, 2019, <https://www.abajournal.com/magazine/article/resolved-to-rebuild-formerly-incarcerated>; Michael Zakaras, "Why Ex-Cons Make Great Entrepreneurs," Forbes, November 5, 2012, <https://www.forbes.com/sites/ashoka/2012/11/05/why-ex-cons-make-great-entrepreneurs/#59acac9f60b6>.

¹³ See, for example, *Impact Analysis of the Prison Entrepreneurship Program*, Initiative for a Competitive Inner City (July 2018); John M. Nally et al., *Post-Release Recidivism and Employment among Different Types of Released Offenders: A 5-Year follow-up Study in the United States*, 9 Int'l J. of Crim. Just. Sci. 16 (2014), <http://www.sascv.org/ijcjs/pdfs/nallyetalijcjs2014vol9issue1.pdf>.

¹⁴ A rigorous 2017 study by Professor Crystal S. Yang found that during times of economic instability recidivism rates are significantly higher. See generally Crystal S. Yang, *Local Labor Markets and Criminal Recidivism*, 147 J Public Econ 16 (2017).

¹⁵ Donald J. Trump, Executive Order, "Federal Interagency Council on Crime Prevention and Improving Reentry," March 7, 2018, <https://www.whitehouse.gov/presidential-actions/federal-interagency-council-crime-prevention-improving-reentry/>.

formerly incarcerated people.¹⁶ The First Step Act prioritized programs to lower recidivism.¹⁷ States too have recognized the need to return economic liberty to those who have served their time for mistakes. Since 2015, 30 states have made it easier for those with criminal records to find work in licensed fields.¹⁸ The SBA should not undermine these vital national policies.

The SBA itself has recognized the importance of making loans available to entrepreneurs regardless of their criminal background. One example is the microloan program authorized under 7(m) of the Small Business Administration Act. This program looks at criminal background only to investigate whether an applicant has engaged in a crime linked to fraud that is directly relevant to a potential loan. In fact, during rulemaking for that program, the SBA directly acknowledged that lowering barriers to loans boosts “successful reentry of formerly incarcerated individuals, who often have difficulty finding steady employment.”¹⁹ Given the goals of the PPP and national policies to reduce recidivism, the SBA should echo its 7(m) approach in the PPP rules.

It is not time to reverse course on criminal justice reform. The current administration should maintain its commitment to giving those involved in the criminal justice system a second chance and making it easier for them to transition back into society. The push towards restoring economic liberty is bipartisan, and common sense. Great progress has been made. The SBA should not create rules that run contrary to long-fought advances. The Interim Final Rule risks sweeping that progress and understanding aside for a quick fix that wrongfully excludes thousands of American entrepreneurs.

2. The SBA’s “75% Rule” Harms Very Small Businesses and is Not Authorized by the CARES Act.

As the CARES Act recognized, small businesses have significant monthly expenses that they must meet to survive this pandemic and to preserve jobs—expenses that include rent, utilities, and debt servicing payments. Many of the smallest and most economically vulnerable businesses have to spend a significant percentage of their budget on meeting those monthly expenses to keep the business going. For a small business with a storefront and one location, the aggregate costs of rent and utilities alone can rival what the business spends on payroll. If they cannot spend PPP loan amounts on those expenses *and receive forgiveness*, the businesses might need to close.

Without reference to any statutory requirement, SBA has declared that, to be eligible for forgiveness, 75% of PPP loans under the CARES Act must be used for payroll costs. Section 2(r)

¹⁶ “President Donald J. Trump is Committed to Building on the Successes of the First Step Act,” White House, April 1, 2019, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-committed-building-successes-first-step-act/>.

¹⁷ See “An Overview of the First Step Act,” Federal Bureau of Prisons, https://www.bop.gov/inmates/fsa/overview.jsp#reduction_in_recidivism.

¹⁸ “State Occupational licensing Reforms for Workers with Criminal Records,” Institute for Justice, <https://ij.org/activism/legislation/state-occupational-licensing-reforms-for-people-with-criminal-records/>.

¹⁹ 80 Fed. Reg. 34043.

of the Interim Final Rule states that “at least 75 percent of the PPP loan proceeds shall be used for payroll costs.”²⁰ Conversely, Section 2(o) of the Interim Final Rule states that “not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs.”²¹ Together, Sections 2(r) and 2(o) form the so-called “75% Rule.” The 75% Rule is unauthorized by Congress and is therefore *ultra vires*; it extends beyond SBA’s authority under the CARES Act. It is also unduly burdensome to small businesses, like our clients.

A. *Real-World Impact of the 75% Rule*

Back of the Yards Coffeehouse is one of our most inspiring clients. Mayra Hernandez and Jesse Iniguez are longtime friends who grew up in the Back of the Yards neighborhood of Chicago, so named because it abutted the stockyards that once provided a lot of jobs in Chicago. When Mayra and Jesse went away to college, they discovered what an asset a coffee shop is for a close-knit community, and they wanted to bring that asset to their own neighborhood. They tried to convince big-name coffee companies to open a shop, presenting statistics about the coffee culture among Latino populations like that of Back of the Yards—but the big names would not come. Eventually, Jesse and Mayra built it themselves. They have created a coffee shop and roastery that anchors the neighborhood.²² With their shop, they have created six jobs for people in the neighborhood. However, rent and utilities for the coffee shop equal the amount they spend on payroll each month.

If they want to be granted loan forgiveness, Mayra and Jesse cannot deploy the PPP funds to cover their full rent and utilities because, if an entrepreneur wants to be eligible for forgiveness, the Interim Final Rule imposes a 25% cap on non-payroll uses of the funds. But, without the PPP funds, they do not have many other options to cover rent and utilities. Their business revenues are tightly constrained by state and city orders regarding restaurants. They also have limited access to other capital sources, as low-income entrepreneurs in a low-income community. If they cannot find the funding to fully cover their shop’s rent and utilities, they may have to close—leaving six people unemployed and another vacant storefront in Back of the Yards. Even though they received the PPP loan, and they are the quintessential business that the CARES Act was designed to help, the 75% rule might make it impossible for them to maintain the continuity of their payroll.

Our client Chicago School of Shoemaking (“CSS”) is another example. CSS is the school where Yohance Lacour refined his skills, and the school’s owner, Sara McIntosh, mentored Yohance as he launched his line of leather sneakers. It is the kind of entrepreneurial gem that makes Chicago a fascinating place to live and work. It creates jobs for artisans and opportunities

²⁰ 85 Fed. Reg. 20814.

²¹ 85 Fed. Reg. 20814.

²² Mary Schmich, “Neighborhood Natives Launch Coffee Shop Where Starbucks Won’t—Back of the Yards,” Chicago Tribune, March 25, 2017, <https://www.chicagotribune.com/columns/mary-schmich/ct-back-of-the-yards-coffee-shop-mary-schmich-0326-20170324-column.html>.

for Chicagoans to learn a craft.²³ Like Back of the Yards Coffeehouse, CSS needs specialized space and equipment to operate. To achieve continuity of payroll, Sara needs to keep the doors open (even when they are closed due to city and state orders) and the lights on by paying rent and utility bills that roughly equal her business's payroll costs.

Many small businesses like Back of the Yards Coffeehouse and the Chicago School of Shoemaking have employees that depend on the business staying afloat, but payroll does not constitute 75% of their core expenses.²⁴ This is especially true for the small neighborhood businesses that occupy storefronts throughout our country—the typical Main Street businesses that are at the heart of our communities. In order for these businesses to survive these very difficult times and stay afloat as employers, they may need to spend more than 25% of their loan on expenses connected to their store, such as rent or a mortgage. This should not preclude them from receiving forgiveness. They are the businesses that are most in need of the forgiveness and capital infusion, and they will also face the greatest detriment if the funding converts to a loan. The imposition of the 75% Rule is detrimental to the Act's goals of keeping workers paid and employed.²⁵

B. The 75% rule is unauthorized by the CARES Act.

The CARES Act does not authorize the SBA's 75% Rule or direct the SBA to create such a rule. The CARES Act permits PPP loans to be made for specific categories of expenses—including payroll costs, mortgage payments, rent, and utilities—but does not impose any requirements regarding what percentage of the loan must be spent on any of these allowed expenses.²⁶ Indeed, the Interim Final Rule acknowledges that the 75% Rule is found nowhere in the CARES Act, and was created out of whole cloth by the SBA: “While the Act provides that PPP loan proceeds may be used for the purposes listed above and for other allowable uses described in section 7(a) of the Small Business Act (15 U.S.C. 636(a)), the Administrator

²³ Jamie Ramsay, “Sara McIntosh Teaches Shoemaking as a First Step Toward Self-Reliance,” Chicago Reader, July 25, 2018, <https://www.chicagoreader.com/chicago/school-shoemaking-sara-mcintosh-craft-cobbler/Content?oid=53761308>.

²⁴ In fact, 67% of the businesses in Chicago have 1-4 employees, and they account for 10% of the jobs in the city. See Initiative for a Competitive Inner City, Report, “The Big Impact of Small Businesses on Urban Job Creation: Evidence from 10 Cities,” 2019, https://icic.org/wp-content/uploads/2019/08/JPMC_BigImpact_JUL2019_ada1.pdf.

²⁵ See “Here's How The Small Business Loan Program Went Wrong In Just 4 Weeks,” NPR, May 4, 2020, <https://www.npr.org/2020/05/04/848389343/how-did-the-small-business-loan-program-have-so-many-problems-in-just-4-weeks>; “Small Businesses Say Rescue Loans Come With Too Many Strings Attached,” NPR, April 28, 2020, <https://www.npr.org/2020/04/28/845930096/small-businesses-say-rescue-loans-come-with-too-many-strings-attached>.

²⁶ Section 1102(a) of the CARES Act amends Section 7(a) of the Small Business Act, 15 U.S.C. 636(a), to permit specified small businesses to receive loans to pay for a variety of expenses, including: payroll costs, mortgage payments, rent, utilities, and interest on any other debt obligations that were incurred before February 15, 2020. Section 1102(a) does not dictate what percentage of the loan may be spent on any particular category of expense, nor does it suggest that any limitation exists. Similarly, Section 1106(a) provides for loan forgiveness of such loans for costs incurred and payments made on payroll costs, mortgage payments, rent, and utilities. Again, Section 1106(a) does not require that a particular percentage of the loan be spent on any particular expense category, and does not provide any discretion to the SBA to impose such a requirement.

believes that finite appropriations and the structure of the Act warrant a requirement that borrowers use a substantial portion of the loan proceeds for payroll costs. . . .”²⁷

The Interim Final Rule also acknowledges that the imposition of the 75% Rule was a determination made by the SBA and not by Congress: “The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage. . . .”²⁸ But this is not a mere exercise of “gap filling” where Congress leaves a specific requirement to be determined by the agency in its discretion. To the contrary, there is no “gap” in the CARES Act for SBA to “fill,” because the Act does not suggest that there should be any limitation on the percentage of the loan that can be spent on an authorized category of expenses.

The SBA attempts to justify the rule by appealing to the “structure” of the Act, noting that, “the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act” and that the Administrator believes the 75% Rule is “consistent with Congress’ overarching goal of keeping workers paid and employed.”²⁹ But that determination is not the SBA’s to make because Congress never delegated such authority to the SBA.

Absent statutory authorization, SBA may not itself impose a new requirement for PPP loans. After all, “an administrative agency’s power to regulate in the public interest must always be grounded in a valid grant of authority from Congress.”³⁰ To do so is to usurp the power of Congress. “[A]n agency literally has no power to act . . . unless and until Congress confers power upon it. . . . An agency may not confer power upon itself. To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress.”³¹ Accordingly, the 75% rule is *ultra vires* of the SBA’s statutory authority under the CARES Act and should be rescinded.

Conclusion

At the IJ Clinic, we work directly with low-income entrepreneurs like Jimmie, Yohance, Mayra, Jesse, and Sara every day. We have seen first-hand what entrepreneurship can do for a person, a community, and the people it touches. Small businesses create jobs and build wealth. They have customers who need goods and services in this crisis and beyond. Sometimes low-income business owners may establish one of the few businesses providing much-needed goods and services in an underserved area.³² Now is not the time to deny aid to businesses that operate in the most distressed parts of our country or disadvantage them.

²⁷ 85 Fed. Reg. 20814.

²⁸ 85 Fed. Reg. 20814.

²⁹ 85 Fed. Reg. 20814.

³⁰ *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000).

³¹ *Louisiana Pub. Serv. Comm’n v. F.C.C.*, 476 U.S. 355, 357 (1986).

³² Many inner cities are “retail deserts” or “food deserts,” meaning that large populations within cities must travel far distances for access to goods and services that many Americans have right around the corner. See Kimberly Durden, “Food Deserts Continue to Plague the Southside,” Chicago Defender, January 7, 2020, <https://chicagodefender.com/food-deserts-continue-to-plague-the-southside/>. See also Lolly Bowean, “I Feel

Entrepreneurs help solve problems for consumers and grow our economy, all while working hard to make their own dreams come true. The right to earn a living is the heart of the American Dream. This is what the CARES Act is focused on protecting. The government should not be in the business of picking winners and losers, but the SBA's Interim Final Rule forces too many struggling entrepreneurs to lose out because they had fewer resources to begin with. Many businesses and jobs will be able to survive government shutdowns thanks to PPP lending. It is not fair that they receive this support while other businesses are forced to fold because of (1) an owner's past crimes (or, in some cases, mere allegations of a crime) that are completely unrelated to the business or (2) the SBA's attempt, contrary to legislative authorization, to limit what PPP funds can be used for. Small businesses around the country have had their liberty and economic freedom taken from them. The PPP is about helping them stay afloat, and saving the jobs and wealth they create for our country.

While many commentators have claimed that the American Dream is a thing of the past, entrepreneurs—especially those who have made mistakes in the past or are building a business with limited resources—are direct proof that it is alive and thriving. Entrepreneurship allows people with past involvement with the criminal justice system and low-income Americans to create prosperous lives for themselves. It gives them access to opportunity that is central to America's commitment to liberty. The federal government should not trample on those dreams by picking winners and losers, arbitrarily doling out assistance to some and leaving others behind. We urge you to address the problems in the Interim Final Rule that we have laid out by eliminating the 75% Rule and Section 2(b)(iii). Now is the time to vindicate and validate the rights of all Americans to pursue an honest living.

Sincerely,

The Institute for Justice Clinic on Entrepreneurship

Cheated': For Some South Side Chicago Residents, Losing 2 Target Stores Isn't Just an Economic Blow," Chicago Tribune, February 7, 2019, <https://www.chicagotribune.com/news/ct-met-chicago-target-stores-close-south-side-20190205-story.html>.

Exhibit N

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket No. SBA-2020-0036]

RIN 3245-AH50

Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Revisions to First Interim Final Rule

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted on its website an interim final rule relating to the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act) (published in the Federal Register on April 15, 2020). Section 1102 of the Act temporarily adds a new product, titled the “Paycheck Protection Program,” to the U.S. Small Business Administration’s (SBA’s) 7(a) Loan Program. Subsequently, SBA issued a number of interim final rules implementing the Paycheck Protection Program. This interim final rule revises SBA’s interim final rule published in the Federal Register on April 15, 2020 by changing the eligibility requirement related to felony convictions of applicants or owners of the applicant.

DATES: Effective Dates: The provisions in this interim final rule are effective [INSERT DATE OF FILING AT THE OFFICE OF THE FEDERAL REGISTER].

Comment Date: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by number SBA-2020-0036, through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to ppp-ifr@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833-572-0502, or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID-19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, have been implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, have been implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116-136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID-19 emergency.

Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the “Paycheck Protection Program.” Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program.

On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116-139), which provided additional funding and authority for the PPP. On June 5, 2020, the President signed the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) (Pub. L. 116-142).

II. Comments and Immediate Effective Date

This interim final rule is effective without advance notice and public comment because section 1114 of the CARES Act authorizes SBA to issue regulations to implement Title I of the Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the grounds that that it would be contrary to the public interest. Specifically, advance public notice and comment would defeat the purpose of this interim final rule given that SBA’s authority to guarantee PPP loans expires on June 30, 2020. These same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Although this interim final

rule is effective on or before date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III below. These comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The SBA will consider these comments, comments received on the interim final rule posted on SBA’s website April 2, 2020 (the First Interim Final Rule) and published in the Federal Register on April 15, 2020, and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program – Additional Revisions to First Interim Final Rule (85 FR 20811)

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and businesses affected by the COVID-19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the “Paycheck Protection Program.” Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. The purpose of this interim final rule is to make changes to the First Interim Final Rule, posted on SBA’s website on April 2, 2020, and published in the Federal Register on April 15, 2020 (85 FR 20811). The First Interim Final Rule, as amended, should be interpreted consistent with the frequently asked questions (FAQs) regarding the PPP that are posted on SBA’s website¹ and the other interim final rules issued regarding the PPP.²

1. Changes to the First Interim Final Rule

¹ See <https://www.sba.gov/document/support--faq-lenders-borrowers>.

² See <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

Eligibility Requirements

The First Interim Final Rule provided, among other things, that a PPP loan will not be approved if an owner of 20 percent or more of the equity of the applicant has been convicted of a felony within the last five years. After further consideration, the Administrator, in consultation with the Secretary of the Treasury (the Secretary), has determined that a shorter timeframe for felonies that do not involve fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance is more consistent with Congressional intent to provide relief to small businesses and also promotes the important policies underlying the First Step Act of 2018 (Pub. L. 115-391). Therefore, Part III.2.b.iii. of the First Interim Final Rule (85 FR 20811, 20812) is revised to read as follows:

b. Could I be ineligible even if I meet the eligibility requirements in (a) above?

You are ineligible for a PPP loan if, for example:

* * *

iii. An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year; or

* * *

2. Additional Information

SBA may provide further guidance, if needed, through SBA notices which will be posted on SBA's website at www.sba.gov. Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Compliance with Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612).
Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

This rule is necessary to implement Sections 1102 and 1106 of the CARES Act and the Flexibility Act in order to provide economic relief to small businesses nationwide adversely impacted under the COVID-19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive effect but does have a limited retroactive effect consistent with section 3(d) of the Flexibility Act.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will require modification to the existing PPP information collection that is approved under OMB Control Number 3245-0407 as an emergency request until October 31, 2020. As discussed above, this rule amends the PPP eligibility requirements regarding certain felony charges. As a result of these amendments, conforming changes will be made to Question 6 of Form 2483, *Borrower Application Form*, and Section H of Form 2484, *Lender Application Form*. SBA will submit the revisions to these forms to the Office of Management and Budget for approval.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the Federal Register. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction

with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are “small entities.” Similarly, for purposes of the RFA, individual persons are not small entities.

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency “certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The agency must, however, publish the certification in the Federal Register at the time of publication of the rule, “along with a statement providing the factual basis for such certification.” If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA’s waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the Federal Register at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Small Business Administration’s Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Act, Ch.I. p.9*. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, Section 1114.

Jovita Carranza,
Administrator

Exhibit O



**Paycheck Protection Program
Borrower Application Form Revised June 12, 2020**

OMB Control No.: 3245-0407
Expiration Date: 10/31/2020

| | | |
|--|---------------------------------------|--|
| Check One: <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Independent contractor <input type="checkbox"/> Eligible self-employed individual <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(19) veterans organization <input type="checkbox"/> Tribal business (sec. 31(b)(2)(C) of Small Business Act) <input type="checkbox"/> Other | DBA or Tradename if Applicable | |
| Business Legal Name | | |
| Business Address | | |
| Business TIN (EIN, SSN) | Business Phone | |
| | () - | |
| Primary Contact | Email Address | |
| | | |

| | | | | | |
|--|----|--|----|----------------------|--|
| Average Monthly Payroll: | \$ | x 2.5 + EIDL, Net of Advance (if Applicable) Equals Loan Request: | \$ | Number of Employees: | |
| Purpose of the loan (select more than one): <input type="checkbox"/> Payroll <input type="checkbox"/> Lease / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain): _____ | | | | | |

Applicant Ownership

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

| Owner Name | Title | Ownership % | TIN (EIN, SSN) | Address |
|------------|-------|-------------|----------------|---------|
| | | | | |
| | | | | |

If questions (1) or (2) below are answered "Yes," the loan will not be approved.

| Question | Yes | No |
|---|--------------------------|--------------------------|
| 1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A. | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B. | <input type="checkbox"/> | <input type="checkbox"/> |

If questions (5) or (6) are answered "Yes," the loan will not be approved.

| Question | Yes | No |
|---|--------------------------|--------------------------|
| 5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole? Initial here to confirm your response to question 5 → _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Within the last 5 years, for any felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance, or within the last year, for any other felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; or 4) been placed on any form of parole or probation (including probation before judgment)? Initial here to confirm your response to question 6 → _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is the Applicant a franchise that is listed in the SBA's Franchise Directory? | <input type="checkbox"/> | <input type="checkbox"/> |



**Paycheck Protection Program
Borrower Application Form Revised June 12, 2020**

By Signing Below, You Make the Following Representations, Authorizations, and Certifications

CERTIFICATIONS AND AUTHORIZATIONS

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

CERTIFICATIONS

The authorized representative of the Applicant must certify in good faith to all of the below by **initialing** next to each one:

- _____ The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
- _____ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
- _____ The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.
- _____ The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the 24-week period following this loan.
- _____ I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 40% of the forgiven amount may be for non-payroll costs.
- _____ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.
- _____ I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- _____ I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Signature of Authorized Representative of Applicant

Date

Print Name

Title



**Paycheck Protection Program
Borrower Application Form Revised June 12, 2020**

Purpose of this form:

This form is to be completed by the authorized representative of the Applicant and *submitted to your SBA Participating Lender*. Submission of the requested information is required to make a determination regarding eligibility for financial assistance. Failure to submit the information would affect that determination.

Instructions for completing this form:

With respect to “purpose of the loan,” payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.

For purposes of calculating “Average Monthly Payroll,” most Applicants will use the average monthly payroll for 2019, excluding costs over \$100,000 on an annualized basis for each employee. For seasonal businesses, the Applicant may elect to instead use average monthly payroll for the time period between February 15, 2019 and June 30, 2019 or any 12-week period between May 1, 2019 and September 15, 2019, excluding costs over \$100,000 on an annualized basis for each employee. For new businesses, average monthly payroll may be calculated using the time period from January 1, 2020 to February 29, 2020, excluding costs over \$100,000 on an annualized basis for each employee.

If Applicant is refinancing an Economic Injury Disaster Loan (EIDL): Add the outstanding amount of an EIDL made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan, to Loan Request as indicated on the form.

All parties listed below are considered owners of the Applicant as defined in 13 CFR § 120.10, as well as “principals”:

- For a sole proprietorship, the sole proprietor;
- For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm;
- For a corporation, all owners of 20% or more of the corporation;
- For limited liability companies, all members owning 20% or more of the company; and
- Any Trustor (if the Applicant is owned by a trust).

Paperwork Reduction Act – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 8 minutes. Comments about this time or the information requested should be sent to: Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416, and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503. **PLEASE DO NOT SEND FORMS TO THESE ADDRESSES.**

Privacy Act (5 U.S.C. 552a) – Under the provisions of the Privacy Act, you are not required to provide your social security number. Failure to provide your social security number may not affect any right, benefit or privilege to which you are entitled. (But see Debt Collection Notice regarding taxpayer identification number below.) Disclosures of name and other personal identifiers are required to provide SBA with sufficient information to make a character determination. When evaluating character, SBA considers the person’s integrity, candor, and disposition toward criminal actions. Additionally, SBA is specifically authorized to verify your criminal history, or lack thereof, pursuant to section 7(a)(1)(B), 15 USC Section 636(a)(1)(B) of the Small Business Act (the Act).

Disclosure of Information – Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act. The Privacy Act authorizes SBA to make certain “routine uses” of information protected by that Act. One such routine use is the disclosure of information maintained in SBA’s system of records when this information indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature. Specifically, SBA may refer the information to the appropriate agency, whether Federal, State, local or foreign, charged with responsibility for, or otherwise involved in investigation, prosecution, enforcement or prevention of such violations. Another routine use is disclosure to other Federal agencies conducting background checks but only to the extent the information is relevant to the requesting agencies’ function. *See*, 74 F.R. 14890 (2009), and as amended from time to time for additional background and other routine uses. In addition, the CARES Act, requires SBA to register every loan made under the Paycheck Protection Act using the Taxpayer Identification Number (TIN) assigned to the borrower.

Debt Collection Act of 1982, Deficit Reduction Act of 1984 (31 U.S.C. 3701 et seq. and other titles) – SBA must obtain your taxpayer identification number when you apply for a loan. If you receive a loan, and do not make payments as they come due, SBA may: (1) report the status of your loan(s) to credit bureaus, (2) hire a collection agency to collect your loan, (3) offset your income tax refund or other amounts due to you from the Federal Government, (4) suspend or debar you or your company from doing business with the Federal Government, (5) refer your loan to the Department of Justice, or (6) foreclose on collateral or take other action permitted in the loan instruments.



**Paycheck Protection Program
Borrower Application Form Revised June 12, 2020**

Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) – The Right to Financial Privacy Act of 1978, grants SBA access rights to financial records held by financial institutions that are or have been doing business with you or your business including any financial institutions participating in a loan or loan guaranty. SBA is only required provide a certificate of its compliance with the Act to a financial institution in connection with its first request for access to your financial records. SBA's access rights continue for the term of any approved loan guaranty agreement. SBA is also authorized to transfer to another Government authority any financial records concerning an approved loan or loan guarantee, as necessary to process, service or foreclose on a loan guaranty or collect on a defaulted loan guaranty.

Freedom of Information Act (5 U.S.C. 552) – Subject to certain exceptions, SBA must supply information reflected in agency files and records to a person requesting it. Information about approved loans that will be automatically released includes, among other things, statistics on our loan programs (individual borrowers are not identified in the statistics) and other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity. Proprietary data on a borrower would not routinely be made available to third parties. All requests under this Act are to be addressed to the nearest SBA office and be identified as a Freedom of Information request.

Occupational Safety and Health Act (15 U.S.C. 651 et seq.) – The Occupational Safety and Health Administration (OSHA) can require businesses to modify facilities and procedures to protect employees. Businesses that do not comply may be fined, forced to cease operations, or prevented from starting operations. Signing this form is certification that the applicant, to the best of its knowledge, is in compliance with the applicable OSHA requirements, and will remain in compliance during the life of the loan.

Civil Rights (13 C.F.R. 112, 113, 117) – All businesses receiving SBA financial assistance must agree not to discriminate in any business practice, including employment practices and services to the public on the basis of categories cited in 13 C.F.R., Parts 112, 113, and 117 of SBA Regulations. All borrowers must display the "Equal Employment Opportunity Poster" prescribed by SBA.

Equal Credit Opportunity Act (15 U.S.C. 1691) – Creditors are prohibited from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

Debarment and Suspension Executive Order 12549; (2 CFR Part 180 and Part 2700) – By submitting this loan application, you certify that neither the Applicant or any owner of the Applicant have within the past three years been: (a) debarred, suspended, declared ineligible or voluntarily excluded from participation in a transaction by any Federal Agency; (b) formally proposed for debarment, with a final determination still pending; (c) indicted, convicted, or had a civil judgment rendered against you for any of the offenses listed in the regulations or (d) delinquent on any amounts owed to the U.S. Government or its instrumentalities as of the date of execution of this certification.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

)
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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

)
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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

for the

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V.

Defendant(s)

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

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_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: