



INSTITUTE FOR JUSTICE

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Via Email

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**Re: Background Study disqualification of Ifrah Yassin under
“preponderance of the evidence” standard**

Dear Ms. Moti, Ms. Davis, Ms. Jones and Ms. Kranz,

My name is Mike Greenberg. I am an attorney at the national civil-liberties law firm, the Institute for Justice. And I’m writing regarding DHS’s permanent disqualification of Ifrah Yassin from working in “direct contact” roles based on its own determination that Ifrah committed “an act that meets the definition of Aggravated Robbery.” Ifrah has never so much as been charged with robbery, in any form, much less convicted of any robbery offense. DHS, though, concluded—without any further explanation—that “there is preponderance of evidence” that Ifrah committed that offense, and based on that conclusion, “permanently disqualifie[d]” her from “any position where a DHS background study is required.”

Ifrah requested reconsideration of that disqualification nearly three months ago (#2978360); DHS has not yet issued her a decision. For nearly a year—the nearly six months that her initial background study took and the three-plus months since DHS disqualified her based on that background study—Ifrah has been banned from accepting a job offer for which she is well qualified. All because of DHS’s erroneous determination that she committed a crime for which she was never charged. All the while, DHS has not provided Ifrah any original evidence—other than its own say-so—supporting its conclusion. That makes it impossible for Ifrah to demonstrate that “the information the commissioner relied upon ... is incorrect.” *See* Minn. Stat. § 245C.21, subd. 3(a)(1).

This “prove your own innocence” process raises serious concerns that Ifrah’s constitutional rights are being violated. We urge DHS to reconsider Ifrah’s disqualification from her chosen occupation based on its unexplained and erroneous determination that Ifrah committed an aggravated robbery—and to do so with all deliberate speed. We do not presently represent Ifrah, but that is subject to change. At base, though, we hope to work together with DHS to resolve this matter amiably.

About the Institute for Justice

The Institute for Justice (IJ) is a national, nonprofit law firm that has fought to protect individuals’ constitutional rights for over 30 years. We have litigated at the U.S. Supreme Court ten times and in state and federal appellate courts around the country dozens of times.

One of our areas of expertise is economic liberty—the constitutionally protected right to engage in a lawful occupation free from unreasonable or procedurally unfair government interference. We have sued dozens of state and local governments for their infringement of this right. We also advise state legislatures and agencies on how they can



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ensure their statutes, codes, and processes respect this constitutional right and reflect good policy generally.¹

We have a particular interest in ensuring that government is not locking people out from stable and much-needed work because of old mistakes they made—or old mistakes the government *thinks* they made—years ago. We are suing Virginia’s Department of Behavioral Health and Developmental Services, for example, to end that state’s lifetime ban on substance-abuse counseling for people who have been convicted for any of a laundry list of 175 offenses at any time in their life.² And we have sued California’s Emergency Medical Services Authority for its policy prohibiting EMT certification for anyone convicted of even one felony in the past 10 years.³ These lawsuits have generated significant and favorable media attention.⁴

IJ also regularly sues state and local governments to end policies that require people to prove their own innocence before they may work, and to end policies which punish people for offenses that they did not commit. (DHS’s background-study regime suffers from both defects.) For just one example, an IJ lawsuit successfully challenged a Pennsylvania law that required people to prove their own “good moral character” before they could work as cosmetologists.⁵ And IJ is now suing an Illinois city for its policy of evicting entire households from rental properties for crimes of other people, but for which the evicted themselves were never charged or convicted.⁶ These lawsuits, too, have resulted in significant and favorable media attention.⁷ As have IJ’s efforts to assist state governments in reforming their laws to avoid these constitutional issues.⁸

Barring Ifrah from Work Based on DHS’s own “Preponderance of Evidence” Determination Raises Significant Legal and Policy Concerns

The “preponderance of evidence” system DHS has used to disqualify Ifrah from working suffers both defects outlined above. The federal courts, including the U.S. Supreme Court just a few years ago, have repeatedly rejected procedural schemes that

¹ See, e.g.: <https://ij.org/report/barred-from-working/>; <https://okcfox.com/news/local/governor-kevin-stitt-senate-house-legislature-politics-sb1691-licensing-barriers-criminal-records-ex-offenders-oklahoma-okc-may-17-2022>.

² See: <https://ij.org/case/virginia-fresh-start/>.

³ See: <https://ij.org/wp-content/uploads/2020/06/ECF-22-First-Amended-Complaint.pdf>.

⁴ See, e.g.: <https://www.nbcnews.com/think/opinion/penal-firefighters-are-battling-california-fires-once-released-they-can-ncna1238511>; <https://www.wtvr.com/news/local-news/virginia-man-suing-state-over-barrier-crimes-im-a-very-changed-individual>.

⁵ See: <https://ij.org/case/pennsylvania-collateral-consequences/>.

⁶ See: <https://ij.org/case/granite-city-compulsory-evictions/>.

⁷ See, e.g.: <https://www.nbcnews.com/news/us-news/want-wax-eyebrows-pennsylvania-you-have-be-good-person-oppressive-n1231660>; <https://www.poonorecord.com/story/news/state/2020/08/30/pa-court-throws-out-good-moral-clause-for-beauty-license-calling-it-absurd/113607536>; <https://www.vox.com/22307509/crime-free-evictions-for-calling-911>; https://www.stltoday.com/opinion/caroline-grace-brothers-don-t-do-the-crime-and-you-may-still-lose-your-home/article_36d48b0d-cd9e-504c-813b-adcb865ff401.html.

⁸ See note 1, *supra*.



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require ensnared individuals to prove their own innocence.⁹ Yet that is exactly what DHS’s background-study system is doing to Ifrah. Rather than presuming her innocent, DHS presumed—even in the absence of criminal charges—that Ifrah committed a criminal offense, without as much as asking for her version of events. The only way to overturn that presumption is for her to prove that “the information the commissioner relied upon ... is incorrect.” *See* Minn. Stat. § 245C.21, subd. 3(a)(1). Saddling her with that burden of proving that she *didn’t* commit a crime breaks with due process principles at a bedrock level; indeed, it’s difficult to imagine what hard documentation there would be to “prove” that negative in the first place.

Barring Ifrah from working for a “crime” she was never convicted of (or even charged with) would violate her constitutional rights in other ways, too. All around the country, state and federal courts alike have repeatedly held that it is unconstitutional to deny people the right to work in their chosen field based on years-old criminal *convictions*. They have done so in fields as sensitive as childcare and school counseling. And they have done so for crimes as serious as robbery and homicide.¹⁰ These courts sensibly conclude that convictions for these offenses years ago do not reflect on the person’s *present* ability to engage in that field of work safely and responsibly. And if courts conclude that it is constitutionally irrational to ban people *convicted* of these offenses from working in these fields, it raises even more concern to ban Ifrah—for whom there was not even enough evidence to *charge* with robbery, much less convict her—from an administrative role.

Permanently disqualifying Ifrah from work for which she is qualified—and for which employers want to hire her—makes for bad policy, too. Even when “collateral consequences” like these bar people from working only if they have been convicted, scholars have recognized that overzealous enforcement does more to promote recidivism than to protect the public from danger. (Of course, Ifrah cannot recidivate for a crime she never committed at all.) One of the strongest indicators for whether someone will commit crimes in the future is their ability to obtain stable, meaningful work. Along those lines, researchers found that state governments affirmatively excluding ex-offenders from work saw increased recidivism rates compared to states that make it easier for ex-offenders to

⁹ *See Nelson v. Colorado*, 581 U.S. 128, 137 (2017) (rejecting a Colorado law that required people to prove their own innocence to obtain certain refunds because, even in the civil context, “they are entitled to be presumed innocent” and “should not be saddled with any proof burden.”).

¹⁰ *See, e.g., Fields v. Dep’t of Early Learning*, 434 P.3d 999 (Wash. 2019) (childcare); *Nixon v. Commonwealth*, 839 A.2d 277 (Pa. 2003) (eldercare); *Johnson v. Allegheny Intermediate Unit*, 59 A.3d 10 (Pa. Commw. Ct. 2012) (public school counseling); *Cronin v. O’Leary*, 2001 WL 919969 (Mass. Super. Ct. Aug. 9, 2001) (health and human services role with unsupervised client contact); *Chunn v. State ex rel. Dep’t of Ins.*, 156 So. 3d 884 (Miss. 2015) (bail bonding); *Pentco, Inc. v. Moody*, 474 F. Supp. 1001 (S.D. Ohio 1978) (massage parlors); *Smith v. Fussenich*, 440 F. Supp. 1077 (D. Conn. 1977) (private detectives and security guards); *Shimose v. Haw. Health Sys. Corp.*, 345 P.3d 145 (Haw. 2015) (radiology); *Warren Cmty. Hum. Servs. v. State Civ. Serv. Comm’n*, 844 A.2d 70 (Pa. Commw. Ct. 2004) (child-protective services); *Lewis v. Ala. Dep’t of Pub. Safety*, 831 F. Supp. 824 (M.D. Ala. 1993) (public tow-truck lists).



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reintegrate economically.¹¹ Overzealous enforcement likewise contributes to cycles of poverty and stunts upward mobility for people like Ifrah.¹² Indeed, because DHS's disqualification has banned her from the work that she is most qualified for and most physically capable of performing, Ifrah has been largely unable to provide for herself and her young daughter for months, and she will face housing insecurity soon if DHS does not reconsider its course promptly. All because of a crime that only DHS seems to believe she committed.

We hope we can work together to resolve this matter harmoniously. To avoid any further devastating policy and constitutional consequences, we urge you to grant Ifrah's request to reconsider and set aside her disqualification with all deliberate speed. Ifrah and I remain available to discuss this matter further if needed. My phone number is (703) 682-9320, x335, and my email is mgreenberg@ij.org.

Sincerely,

Mike Greenberg
Attorney
Institute for Justice

cc: Ifrah Yassin (ifrahyassin10@yahoo.com).
Erica Smith Ewing (esmith@ij.org).

¹¹ See Stephen Slivinski, *Turning Shackles into Bootstraps: Why Occupational Licensing Reform is the Missing Piece of Criminal Justice Reform*, Center for the Study of Economic Liberty at Arizona State University (Nov. 7, 2016), available at <https://csel.asu.edu/sites/default/files/2019-09/csel-policy-report-2016-01-turning-shackles-into-bootstraps.pdf>.

¹² See, e.g., Scott Lincicome, *Criminal Justice Reform Can Lower Recidivism and Boost Workforce Participation*, *The Dispatch* (Feb. 1, 2023), available at <https://thedispatch.com/newsletter/capitolism/criminal-justice-reform-can-lower-recidivism-and-boost-workforce-participation/>.