September 23, 2020

To Brian Chesky, Nathan Blecharczyk, and Joe Gebbia:

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

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

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

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

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

Essentially, Airbnb’s policy means it has no accountability for the way it treats people with arrest and conviction records. Under the policy, the company has given itself wide discretion to ban users based on vague conclusions about arrest and conviction records without an explanation of its decision-making. For example, Airbnb’s website states that “[u]sers with serious criminal histories may be removed or referred for further review if our checks show convictions within a certain time period.” The time period for exclusion from the platform could range from 14 years from the time of conviction to an indefinite ban. There is no explanation of: (i) what a “serious criminal history” means from Airbnb’s perspective, (ii) what the process is for decision making about whether someone gets banned based on that “history,” (iii) whether there is any attempt to ensure the accuracy of the record relied upon, (iv) who makes banning decisions, (v) what “referred for further review” means, or (vi) the specifics of any process to contest removal from the platform. Airbnb’s policy is far more draconian than
those implemented in major cities across the United States. This policy is not in keeping with
the company’s purported philosophy of inclusiveness and human understanding or Airbnb’s
recent twitter support of Black lives.

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

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

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

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

American Civil Liberties Union
John Jay College Institute for Justice and Opportunity
Legal Action Center
The Bronx Defenders
Community Service Society of New York
The Precedential Group
1 @Airbnb, Twitter, (June 1, 2020), https://twitter.com/airbnb/status/1267536619164151808?lang=en.


21 Id.


