



UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW • Suite 1150 • Washington, DC 20425 www.usccr.gov

February 12, 2018

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re.: Attorney General Jeff Sessions' Withdrawal of Critical Civil Rights Guidance

Dear Attorney General Sessions:

On January 19, 2018, a majority of the United States Commission on Civil Rights voted to urge you to correct your erroneous decision to rescind the Department of Justice's March 2017 Dear Colleague Letter on Enforcement of Fines and Fees, its January 2017 advisory on juvenile fines and fees, and multiple documents on the Americans with Disabilities Act. I attach here the Commission statement memorializing our recommendations, titled U.S. Commission on Civil Rights Strongly Criticizes Attorney General Jeff Sessions' Withdrawal of Critical Civil Rights Guidance.¹

The Commission is concerned that your withdrawal of the guidance documents will have unintended consequences that will cause civil rights harms, inconsistent with your charge and ours. Courts may erroneously determine that jailing the poor when they are unable to pay does not offend the Constitution. Police officers and courts pressured to raise revenue may revert back to predatory practices in enforcing fines and fees, as detailed both in a recent Commission report² and in the DOJ guidance documents you rescinded. State and local governments may only offer employment to people with disabilities in a segregated setting.

Attorney General, the Commission respectfully urges that you reinstate the guidance immediately.

Thank you for your consideration and I look forward to your response.

¹ <http://www.usccr.gov/press/2018/01-19-PR-Sessions.pdf>

² http://www.usccr.gov/pubs/Statutory_Enforcement_Report2017.pdf

Sincerely,

A handwritten signature in black ink, appearing to read 'CEL', with a long horizontal flourish extending to the right.

Catherine E. Lhamon, Chair

Enclosure

cc: John M. Gore
Acting Assistant Attorney General, Civil Rights Division, U.S. Department of
Justice

Rachel L. Brand
Associate Attorney General, U.S. Department of Justice

Bob Bullock
Senior Counsel, Office for Access to Justice, U.S. Department of Justice

Alan Hanson
Principal Deputy Assistant Attorney General, Office of Justice Programs, U.S.
Department of Justice

Russ Washington
Acting Director, Office of Community Oriented Policing Services, U.S.
Department of Justice

Nadine M. Neufville
Deputy Director, Office on Violence Against Women, U.S. Department of Justice



U.S. Commission on Civil Rights Strongly Criticizes Attorney General Jeff Sessions' Withdrawal of Critical Civil Rights Guidance

January 19, 2018

The U.S. Commission on Civil Rights, by majority vote, decries Attorney General Jeff Sessions' recent decision to rescind the Department of Justice's March 2016 Dear Colleague Letter on Enforcement of Fines and Fees, its January 2017 advisory on juvenile fines and fees, and multiple documents on the Americans with Disabilities Act.¹ Attorney General Sessions trumpeted the truism that "any guidance that is outdated, used to circumvent the regulatory process, or that improperly goes beyond what is provided for in statutes or regulation should not be given effect." That claim does not, however, apply to these recent, narrowly crafted, urgently applicable guidance documents. For example, the Department issued the two Dear Colleague letters related to access to justice for low-income Americans to simply remind state Chief Justices and state court administrators of what the Constitution requires regarding the enforcement of fines and fees and to promote best practices for municipal courts in dealing with individuals who are unable to pay.²

In September 2017, the Commission released its statutory enforcement report, *Targeted Fines and Fees Against Low-Income People of Color: Civil Rights and Constitutional Implications*.³ The Commission found that court imposition of fines and fees for criminal and civil justice activities has become a common practice in many jurisdictions across the country—and that even after public condemnation of the excesses of such practices, most states have taken virtually no steps to conform their actions to the law.⁴ The Commission also heard from judicial officials who candidly admitted that some of their judges did not know the law prohibiting jailing people for their inability to pay fines and fees. The Commission's report noted two critical points relevant to the Department's guidance in this area. First, the Dear Colleague letters have led to reforms among states and municipalities. Second, after hearing bipartisan clamor for continued leadership in this area from the Department, the Commission recommended that the Department continue to promote core principles identified through its Dear Colleague letters. Both of these

¹ U.S. Department of Justice, Attorney General Jeff Sessions Rescinds 25 Guidance Documents, December 21, 2017, <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents> (noting that Executive Order 13777 called for agencies to "identify existing regulations for potential repeal, replacement, or modification").

² U.S. Department of Justice, Dear Colleague Letter, March 14, 2016, <https://www.justice.gov/opa/file/832541/download>; U.S. Department of Justice, Advisory for Recipients of Financial Assistance, January 2017, <https://ojp.gov/archives/documents/AdvisoryJuvFinesFees.pdf>.

³ U.S. Commission on Civil Rights, September 2017, http://www.usccr.gov/pubs/Statutory_Enforcement_Report2017.pdf

⁴ Id. at 52.

points and the report, in general, highlight the importance of the Department's guidance to states and localities in limiting unconstitutional practices.

The Commission is similarly troubled by the withdrawal of Department guidance related to civil rights for persons with disabilities, including a Department statement addressing integration of people with disabilities to state and local government employment service systems, as required under Title II of the Americans with Disabilities Act.⁵ This simple statement of existing law serves as a clear reminder that the Department of Justice stands ready to enforce civil rights for these Americans; withdrawing the guidance, however, sends the opposite message, relegating rights to the vagaries of local will, inconsistent with Congress' federal mandate.

The Commission is concerned that the withdrawal of the Dear Colleague guidance will have unintended consequences. Courts may erroneously determine that jailing the poor when they are unable to pay does not offend the Constitution. Police officers and courts pressured to raise revenue may revert back to predatory practices in enforcing fines and fees. State and local governments may only offer employment to people with disabilities in a segregated setting.

The Commission calls for Attorney General Sessions immediately to correct the civil rights harm his guidance withdrawal works on our nation's social fabric by reinstating the guidance, signaling the necessary ongoing leadership of the nation's Department of Justice in actually securing justice for the people.

Chair Catherine E. Lhamon stated: "Federal leadership is essential to securing civil rights. Through these repeated guidance withdrawals, the Department of Justice relegates Americans to less justice rather than leading the way to ensure greater justice. The Commission strongly urges the Department of Justice to course correct to fulfill its mandate of equal and impartial justice for all."

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The U.S. Commission on Civil Rights is the only independent, bipartisan federal agency charged with advising the President and Congress on civil rights matters and issuing an annual federal civil rights enforcement report. For information about the Commission, please visit <http://www.usccr.gov> and follow us on [Twitter](#) and [Facebook](#).

⁵ U.S. Department of Justice, Statement of the Department of Justice on Application of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C. to State and Local Governments' Employment Service Systems for Individuals with Disabilities*, Oct. 31, 2016, <https://www.documentcloud.org/documents/4335387-Integration-Mandate-Statement.html>.