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 CITY AND COUNTY OF SAN FRANCISCO

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 12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 CITY AND COUNTY OF SAN
 FRANCISCO,

16 Plaintiff,

17 vs.

18 JEFFERSON B. SESSIONS III, Attorney
 19 General of the United States, UNITED
 STATES DEPARTMENT OF JUSTICE,
 20 DOES 1-100,

21 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. This lawsuit challenges Defendants’ bulk rescission of a wide swath of Department of
3 Justice (“DOJ” or “Department”) guidance documents setting forth DOJ’s interpretation of laws that
4 protect immigrants, the poor, people of color, and people with disabilities. The documents—which
5 provided guidance to regulated entities and helped to protect the civil rights of marginalized
6 individuals across the country—were withdrawn without any meaningful explanation, as required by
7 the Administrative Procedure Act (“APA”). Such an unexplained bulk repeal was unprecedented
8 prior to this administration. The rescission was arbitrary and capricious, and should be vacated.

9 2. The stated mission of DOJ is “to ensure fair and impartial administration of justice for
10 all Americans.” Yet, over the past year and a half, the Department—under the leadership of Attorney
11 General Jefferson B. Sessions—has shown a shocking disregard for protecting the rights of
12 vulnerable communities, rolling back civil rights initiatives in a wide variety of areas. Barely a
13 month into the Trump administration, for example, the Department dropped the federal government’s
14 longstanding position that a Texas voter ID law under legal challenge was intentionally racially
15 discriminatory. Shortly thereafter, DOJ attempted—unsuccessfully—to block a court from approving
16 a consent decree negotiated by the Department following an extensive multi-year investigation that
17 aimed to reform discriminatory police practices in the Baltimore Police Department. The DOJ also
18 effectively shut down the Office for Access to Justice (“ATJ”), which was dedicated to improving
19 legal resources for indigent litigants in civil, criminal, and tribal courts. ATJ’s offices now sit dark in
20 the Justice Department building.

21 3. And, in December 2017, Attorney General Sessions rescinded twenty-five DOJ
22 guidance documents—most of which were aimed at protecting marginalized communities.

23 4. In a press release announcing the repeal, Attorney General Sessions declared—in broad
24 conclusory terms—that the documents were being withdrawn because they were “unnecessary,
25 inconsistent with existing law, or otherwise improper.” *See* Press Release No. 17-1469, DOJ Office
26 of Public Affairs, *Attorney General Jeff Sessions Rescinds 25 Guidance Documents* (Dec. 21, 2017)
27 (attached hereto as Exhibit A). He also stated generally that “any guidance that is outdated, used to
28 circumvent the regulatory process, or that improperly goes beyond what is provided for in statutes or

1 regulation should not be given effect.” *Id.* He did not explain which rationale allegedly applied to
2 which document or offer any other particularized justification.

3 5. Elsewhere, components of DOJ have offered additional explanation for the repeal of
4 some of the guidance documents. For example, the Civil Rights Division explains on its website that
5 the guidance on bailing-out procedures under Section 4(b) and Section 5 of the Voting Rights Act
6 was withdrawn because the “Supreme Court’s decision in *Shelby County v. Holder*, 570 U.S. ____
7 (2013) held that the coverage formula set forth in Section 4(b) of the Act was unconstitutional, and as
8 a consequence, no jurisdictions are now subject to the coverage formula in Section 4(b) or to Sections
9 4(f)(4) and 5 of Act. Accordingly, guidance regarding bailout under Section 4(a) is no longer
10 necessary.” *See Section 4 of the Voting Rights Act*, DOJ Civil Rights Division, [https://www.justice.](https://www.justice.gov/crt/section-4-voting-rights-act)
11 [gov/crt/section-4-voting-rights-act](https://www.justice.gov/crt/section-4-voting-rights-act) (last updated Dec. 21, 2017).

12 6. But slipped into the mix of the twenty-five repealed documents were six significant
13 civil rights documents that Defendants provided no meaningful explanation for withdrawing. All six
14 provided critical guidance to state and local governments about compliance with federal laws.
15 Among them were procedures to help state and local governments eliminate unlawful fees against
16 juvenile offenders, standards outlining discrimination protections for disabled individuals in
17 government employment service systems, and guidance for employers about compliance with the
18 anti-discrimination provisions of the Immigration and Nationality Act.

19 7. The rescission of these documents has been decried by disability rights groups and civil
20 rights activists.¹ Indeed, the United States Commission on Civil Rights—an independent, bipartisan
21 federal agency charged with advising the President and Congress on civil rights matters—issued a
22 statement “strongly criticiz[ing]” the withdrawal of the “recent, narrowly crafted, urgently applicable
23

24 ¹ *See, e.g., Lawyers’ Committee for Civil Rights Under Law Condemns DOJ’s Decision to*
25 *Revoke Critical Legal Guidance Documents*, Lawyers’ Committee for Civil Rights (Dec. 22, 2017),
26 [https://www.commondreams.org/newswire/2017/12/22/lawyers-committee-civil-rights-under-law-](https://www.commondreams.org/newswire/2017/12/22/lawyers-committee-civil-rights-under-law-condemns-doj-s-decision-revoke-critical)
27 [condemns-doj-s-decision-revoke-critical](https://www.commondreams.org/newswire/2017/12/22/lawyers-committee-civil-rights-under-law-condemns-doj-s-decision-revoke-critical) (“We condemn Attorney General Sessions’s latest attempt to
28 turn back the clock on civil rights progress”); *DOJ Withdraws Olmstead Employment Guidance*,
Letter to DOJ in Response to Olmstead Guidance Withdrawal from Over 200 Disability
Organizations, Center for Public Representation (Jan. 5, 2018), [https://centerforpublicrep.org/](https://centerforpublicrep.org/initiative/doj-withdraws-olmstead-employment-guidance/)
[initiative/doj-withdraws-olmstead-employment-guidance/](https://centerforpublicrep.org/initiative/doj-withdraws-olmstead-employment-guidance/).

1 guidance documents.” *U.S. Commission on Civil Rights Strongly Criticizes Attorney General Jeff*
2 *Sessions’ Withdrawal of Critical Civil Rights Guidance*, U.S. Commission on Civil Rights (Jan. 19,
3 2018), <http://usccr.gov/press/2018/01-19-PR-Sessions.pdf>. The Commission “call[ed] for Attorney
4 General Sessions immediately to correct the civil rights harm his guidance withdrawal works on our
5 nation’s social fabric by reinstating the guidance, signaling the necessary ongoing leadership of the
6 nation’s Department of Justice in actually securing justice for the people.” *Id.*

7 8. Defendants’ failure to provide any meaningful explanation for the repeal of these
8 documents is galling—and unlawful. The APA requires agencies to disclose the basis of their
9 decisions, including policy changes made through repeals. They must demonstrate that they engaged
10 in reasoned decision-making. And the explanation for their decision cannot be conclusory; it must be
11 clear enough that the agency’s “path may reasonably be discerned.” *Bowman Transp., Inc. v.*
12 *Arkansas–Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974).

13 9. The APA imposes these requirements for an important reason. A fundamental tenet of
14 our administrative system is that agency decision-making should not happen in the shadows. The
15 APA’s procedural requirements exist to allow members of the public—and the courts—to understand
16 and evaluate the legitimacy and consequences of the agency’s action. In the absence of such an
17 explanation, the public is left to guess whether Defendants believe the repealed documents are
18 outdated—and, if so, whether a different document controls—or improperly imposed binding
19 obligations that should have been issued through notice-and-comment rulemaking. Regulated entities
20 like San Francisco and the individuals impacted by the rescission of the documents cannot evaluate
21 the validity of the repeal, challenge it if necessary, or tailor their conduct appropriately when agency
22 action is opaque.

23 10. The public is entitled to—and the APA demands—more from our federal government.

24 JURISDICTION AND VENUE

25 11. The Court has jurisdiction under 28 U.S.C. Sections 1331 and 1346. This Court has
26 further remedial authority under the Declaratory Judgment Act, 28 U.S.C. Sections 2201 and 2202 *et*
27 *seq.* There exists an actual and justiciable controversy between Plaintiff and Defendants requiring
28 resolution by this Court. Plaintiff has no adequate remedy at law.

1 19. DOJ established the required task force and installed former Associate Attorney
2 General Rachel Brand as the chair²—but has refused to provide information to the public about other
3 task force members.³

4 20. On June 28, 2017, the DOJ Task Force published a Request for Public Comment in the
5 Federal Register seeking input on regulatory actions that should be considered for repeal,
6 replacement, or modification. *Enforcing the Regulatory Reform Agenda; Department of Justice Task*
7 *Force on Regulatory Reform Under E.O. 13777*, 82 Fed. Reg. 29,248 (proposed June 28, 2017). This
8 cursory notice requested public comment in broad terms without reference to any specific regulation
9 or document.

10 21. Among the comments submitted was a request by the Leadership Conference on Civil
11 and Human Rights for DOJ to identify individual regulations and policies it was considering for
12 repeal. Letter from Kristine Lucius, Executive Vice President, the Leadership Conference on Civil
13 and Human Rights, to Robert Hinchman, Senior Counsel of the Office of Legal Policy, DOJ (Aug.
14 14, 2017), <https://www.regulations.gov/document?D=DOJ-OLP-2017-0007-0013>. The Leadership
15 Conference explained that in order to provide meaningful comments, it “would need the Department
16 to give proper notice of which specific regulations or policies it is considering repealing, replacing, or
17 modifying.” *Id.*

18 22. Other agencies did this—publishing notice in the Federal Register of the specific rules
19 and regulations considered for repeal or modification. For example, the U.S. Patent and Trademark

20 ² Rachel Brand left DOJ in February 2018. DOJ has not disclosed who—if anyone—replaced
21 her as chair of the task force.

22 ³ See Robert Faturechi, *Secrecy and Suspicion Surround Trump’s Deregulation Teams*,
23 ProPublica (Aug. 7, 2017), [https://www.propublica.org/article/secrecy-and-suspicion-surround-](https://www.propublica.org/article/secrecy-and-suspicion-surround-trumps-deregulation-teams)
24 [trumps-deregulation-teams](https://www.propublica.org/article/secrecy-and-suspicion-surround-trumps-deregulation-teams) (“In an email exchange, a spokesman, Ian Prior, said he could not provide
25 additional names because ‘the Task Force is made up of components, not particular employees.’ ‘A
26 component may have multiple employees assisting with the work,’ he added. Asked if he could name
27 any of those employees, he responded, ‘Decline.’”).

28 Indeed, ignoring multiple requests by members of Congress to disclose Regulatory Reform
Task Force members leading regulatory rollback efforts, DOJ and other agencies “are actively hiding
their members and their meetings from public view.” Letter from Rep. Elijah Cummings et al. to
Mick Mulvaney & Neomi Rao (Aug. 7, 2017). As a result, senior members of the House of
Representatives Committee of Oversight and Government Reform have requested subpoenas to
compel DOJ to provide the names of their task force members. See Letter from Rep. Elijah E.
Cummings to Rep. Trey Gowdy (Mar. 13, 2018).

1 Office published a proposal to remove regulations governing reservation clauses, petitions from a
2 primary examiner’s refusal to admit an amendment, and other specific rules pursuant to Executive
3 Order 13777. *See* Changes To Eliminate Unnecessary Regulations, 83 Fed. Reg. 2759-60 (proposed
4 Jan. 19, 2018).⁴ DOJ, however, provided no further information on the specific documents being
5 considered for repeal.

6 23. Instead, on November 17, 2017, Attorney General Sessions stated at the Federalist
7 Society 2017 National Lawyers Convention that “[w]e have prohibited all Department of Justice
8 components from issuing any guidance that purports to impose new obligations on any party outside
9 the Executive Branch. We will review and repeal existing guidance documents that violate this
10 common sense principle.” *See Attorney General Sessions Delivers Remarks at the Federalist Society*
11 *2017 National Lawyers Convention*, DOJ Office of Public Affairs (Nov. 17, 2017), [https://www.
12 justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-federalist-society-2017-national-
13 lawyers](https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-federalist-society-2017-national-lawyers).

14 24. He also issued a memorandum prohibiting all divisions of the Department of Justice
15 from issuing guidance documents that have the effect of adopting new regulatory requirements or
16 amending the law. *See* Memorandum from the Attorney General to “All Components” Regarding
17 Prohibition on Improper Guidance Documents (Nov. 16, 2017), [https://www.justice.gov/opa/press-
18 release/file/1012271/download](https://www.justice.gov/opa/press-release/file/1012271/download) (“November Memorandum”).

19 25. Specifically, in the November Memorandum, Attorney General Sessions declared:

20 [G]uidance may not be used as a substitute for rulemaking and may not be used
21 to impose new requirements on entities outside the Executive Branch. Nor

22
23 ⁴ *See also, e.g.*, Eliminating Unnecessary Tax Regulations, 83 Fed. Reg. 6806 (proposed Feb.
24 15, 2018) (IRS proposing to remove 298 tax regulations); Pesticides; Agricultural Worker Protection
25 Standard; Reconsideration of Several Requirements and Notice About Compliance Dates, 82 Fed.
26 Reg. 60,576 (proposed Dec. 21, 2017) (EPA notifying public it seeks to revise certain Agricultural
27 Worker Protection Standard requirements); Claims Procedure for Plans Providing Disability Benefits;
28 Extension of Applicability Date, 82 Fed. Reg. 47,409 (proposed Oct. 12, 2017) (Department of Labor
proposing to delay applicability of the Final Rule amending claims procedure requirements for
ERISA-covered employee benefit plans providing disability benefits); National Performance
Management Measures, 82 Fed. Reg. 46,427 (proposed Oct. 5, 2017) (Federal Highway
Administration notice of proposed rulemaking seeking to repeal the 2017 Greenhouse Gas
performance measures for state departments of transportation and metropolitan planning
organizations).

1 should guidance create binding standards by which the Department will
2 determine compliance with existing regulatory or statutory requirements.

3 It has come to my attention that the Department has in the past published
4 guidance documents—or similar instruments of future effect by other names,
5 such as letters to regulated entities—that effectively bind private parties without
6 undergoing the rulemaking process.

7 *Id.* at 1.

8 26. The press release announcing the issuance of the November Memorandum further
9 elaborated that the “Attorney General’s Regulatory Reform Task Force . . . will conduct a review of
10 existing Department documents and will recommend candidates for repeal or modification in the light
11 of this memo’s principles.” Press Release No. 17-1309, DOJ Office of Public Affairs, *Attorney*
12 *General Jeff Sessions Ends the Departments Practice of Regulation by Guidance* (Nov. 17, 2017),
13 [https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-department-s-practice-regulation-](https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-department-s-practice-regulation-guidance)
14 [guidance.](https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-department-s-practice-regulation-guidance)

15 27. And then-chair of the task force, Rachel Brand, stated: “Guidance documents . . .
16 should not be used to change the law or to impose new standards to determine compliance with the
17 law. The notice-and-comment process that is ordinarily required for rulemaking can be cumbersome
18 and slow, but it has the benefit of availing agencies of more complete information about a proposed
19 rule’s effects than the agency could ascertain on its own. This Department of Justice will not use
20 guidance documents to circumvent the rulemaking process, and *we will proactively work to rescind*
21 *existing guidance documents that go too far.*” *Id.* (emphasis added).

22 28. The following month, on December 21, 2017, Attorney General Sessions announced
23 that, pursuant to Executive Order 13777 and his November Memorandum, he was rescinding twenty-
24 five DOJ guidance documents that were “unnecessary, inconsistent with existing law, or otherwise
25 improper.” *See* Ex. A.

26 29. The vast majority of the documents—which dated back decades and covered topics as
27 diverse as Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) procedures and the
28 Americans with Disabilities Act—were aimed at protecting marginalized communities, including
immigrants, people of color, the poor, and individuals with disabilities.

1 30. At the time he announced the repeal, Attorney General Sessions offered six short
2 sentences in explanation:

3 Last month, I ended the longstanding abuse of issuing rules by simply
4 publishing a letter or posting a web page. Congress has provided for a
5 regulatory process in statute, and we are going to follow it. This is good
6 government and prevents confusing the public with improper and wrong advice.

7 Therefore, any guidance that is outdated, used to circumvent the regulatory
8 process, or that improperly goes beyond what is provided for in statutes or
9 regulation should not be given effect. That is why today, we are ending 25
10 examples of improper or unnecessary guidance documents identified by our
11 Regulatory Reform Task Force led by our Associate Attorney General Rachel
12 Brand. We will continue to look for other examples to rescind, and we will
13 uphold the rule of law.

14 *Id.*

15 31. Attorney General Sessions did not state why any of the twenty-five was specifically
16 selected to be withdrawn. He provided no details on which documents had been deemed outdated,
17 which were “unnecessary,” or which were in some way improper because they imposed new binding
18 rights or obligations on persons or entities outside the executive branch.

19 32. Components of DOJ provided additional explanation with respect to the rescission of
20 certain documents in other places, noting that specific documents were outdated and explaining why.
21 The ATF, for example, issued a ruling explaining that the ATF documents being withdrawn were
22 “unnecessary . . . to the appropriate application of current law and regulation.” ATF Ruling 2017-1,
23 *Revoking Certain Guidance Documents*, DOJ Bureau of Alcohol, Tobacco, Firearms and Explosives,
24 (Dec. 20, 2017), [https://www.atf.gov/resource-center/docs/ruling/2017-1-revoking-certain-guidance-
25 documents/download](https://www.atf.gov/resource-center/docs/ruling/2017-1-revoking-certain-guidance-documents/download). It then listed the documents and explained exactly why each one had been
26 deemed unnecessary—for example, ATF Procedure 75-4 was no longer necessary because the
27 procedure it described had been “incorporated into the Application for Explosives License or Permit,
28 ATF Form 5400,” and ATF Ruling 85-3 was “made obsolete by amendments to 18 U.S.C.
922(b)(3).” *Id.*⁵

⁵ See also, e.g., *Section 4 of the Voting Rights Act*, DOJ Civil Rights Division, <https://www.justice.gov/crt/section-4-voting-rights-act> (last updated Dec. 21, 2017) (Civil Rights Division website explaining that guidance on bailing-out procedures under Section 4(b) and Section 5 of the Voting Rights Act was withdrawn because the Supreme Court’s holding in *Shelby County v. Holder*, 570 U.S. ___ (2013), that the coverage formula set forth in Section 4(b) of the Act was unconstitutional rendered guidance regarding bailout under Section 4(a) unnecessary); *Commonly*

1 33. But among the large swath of rescinded documents were six significant ones about
2 which Defendants have provided no meaningful explanation.

3 **A. Statement Concerning Application Of The ADA’s Integration Mandate To State**
4 **And Local Governments.**

5 34. One of the documents rescinded without adequate explanation was a “Statement of the
6 Department of Justice on Application of the Integration Mandate of Title II of the Americans with
7 Disabilities Act and *Olmstead v. L.C.* to State and Local Governments’ Employment Service Systems
8 for Individuals with Disabilities.” *See* Ex. B (the “Statement”).

9 35. In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the Supreme Court ruled that pursuant to the
10 integration mandate in Title II of the ADA, state and local governments must create pathways for
11 people with disabilities to live in their own homes or group homes located within their communities,
12 rather than isolating them in segregated institutions.

13 36. The repealed Statement, which was issued in 2016, explained to state and local
14 governments how this ruling applied to their employment service systems.

15 37. Specifically, it provided answers to questions such as:

- 16 • “What is the ADA’s Title II integration mandate, and how does it apply to state and
17 local governments’ employment service systems?” Ex. B at 3.
- 18 • “What is the most integrated setting under the ADA and *Olmstead* in the context of a
19 state and local government’s employment service system?” *Id.* at 4.
- 20 • “How can state and local governments’ employment service systems ensure that people
21 with disabilities have access to competitive integrated employment?” *Id.* at 5.

22 38. In answering these questions, DOJ affirmed that the integration mandate applied not
23 only to where individuals with disabilities live, but also to where they spend their days—including at

24 _____
25 *Asked Questions About Service Animals in Places of Business*, DOJ Civil Rights Division Disability
26 Rights Section (July 1996), <https://www.ada.gov/archive/qasrvc.htm> (“[Commonly Asked Questions
27 About Service Animals in Places of Business (July 1996)] has been withdrawn because it is outdated
28 and was superseded by the current ADA title II and title III regulations For more information
about the Department's withdrawn technical assistance and guidance documents, please go to:
www.ada.gov/ta_withdrawn.html. For the current version of this document, please go to Frequently
Asked Questions about Service Animals and the ADA.”).

1 work. It explained that government work programs for people with disabilities were required to
2 integrate employees with disabilities with their non-disabled peers. And it provided criteria to
3 determine “the most integrated setting” for employment services for an individual with a disability,
4 and a process to ensure that individuals with disabilities have access to competitive, integrated
5 employment. *See generally* Ex. B.

6 39. According to disability advocates, the Statement was integral to helping people with
7 disabilities across the country move away from isolated “sheltered workshops,” where they are often
8 paid much less than minimum wage and are vulnerable to exploitation and abuse.⁶

9 40. Attorney General Sessions withdrew the Statement without any meaningful
10 explanation.

11 41. On ADA.gov, DOJ provided the following explanation for the withdrawal of this
12 critical document: “This action was taken to afford further discussion with relevant stakeholders,
13 including public entities and the disability community, as to how best to provide technical assistance
14 in this area.” *Withdrawal of the Statement of the Department of Justice on Application of the*
15 *Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C. to State*
16 *and Local Governments’ Employment Service Systems for Individuals with Disabilities*, DOJ Civil
17 Rights Division (Dec. 21, 2017), https://www.ada.gov/withdrawn_olmstead.html. This explanation,
18 however, is entirely different from those given by Attorney General Sessions. It does not indicate
19 that DOJ determined the Statement was outdated, or unnecessary, or improper. Rather, it introduces
20 an entirely new rationale—that it was withdrawn to allow for further discussion and consideration of
21 the principles addressed in the guidance.

22
23
24 ⁶ For this reason, its repeal has been met with widespread outrage from disability rights
25 organizations. Indeed, over 200 disability organizations sent a letter to the Acting Assistant Attorney
26 General for Civil Rights expressing concern over the effect the withdrawal will have on people with
27 disabilities across the country. *See* Letter from Consortium for Citizens with Disabilities to AAG John
28 Gore (Jan. 8, 2018), <https://centerforpublicrep.org/wp-content/uploads/2017/12/letter-to-DOJ-re-withdrawal-of-guidance-1-5-18.pdf>. The U.S. Commission on Civil Rights has also urged Attorney
General Sessions to reconsider the withdrawal. *U.S. Commission on Civil Rights Strongly Criticizes*
Attorney General Jeff Sessions’ Withdrawal of Critical Civil Rights Guidance, U.S. Commission on
Civil Rights (Jan. 19, 2018), <http://uscrr.gov/press/2018/01-19-PR-Sessions.pdf>.

1 42. And elsewhere on ADA.gov, DOJ indicates that it withdrew the Statement because it
2 was “*out-of-date, duplicative, or otherwise ineffective*” and its withdrawal would “make it easier for
3 individuals with disabilities, covered entities, and the public to understand their rights and
4 responsibilities under the ADA.” ADA.gov website, DOJ Civil Rights Division, [https://www.ada.](https://www.ada.gov/ta_withdrawn.html)
5 [gov/ta_withdrawn.html](https://www.ada.gov/ta_withdrawn.html) (emphasis added).

6 43. In fact, there is reason to believe that the withdrawal of this guidance reflects a *sub rosa*
7 substantive shift in federal interpretation and enforcement of Title II’s integration mandate. Sheltered
8 workshops are profitable enterprises, and a national trade association for sheltered workshops began
9 lobbying DOJ’s new political leadership to repeal the *Olmstead* Statement in August 2017. *See*
10 David M. Perry, *Companies That Exploit Disabled People Have a Friend in Jeff Sessions*, Pacific
11 Standard (Jan. 3, 2018), <https://psmag.com/economics/jeff-sessions-roll-back-disability-rights>. In
12 light of this background as well as the fact that eighteen of the comments submitted in response to the
13 request for input on the Department’s regulatory reform agenda urged a withdrawal of the *Olmstead*
14 guidance and/or a change in the underlying substance, the repeal appears to indicate a meaningful
15 shift in policy.

16 44. Given the vague and contradictory explanations proffered by Defendants, state and
17 local governments, as well as the public, are left without any clear indication of why Defendants
18 actually decided to withdraw this document.

19 **B. Statement On Ability Of Local Government To Exercise Control Over Group**
20 **Living Arrangements For People With Disabilities.**

21 45. Another one of the repealed documents was a joint statement by DOJ and the
22 Department of Housing and Urban Development concerning the Fair Housing Act’s effect on the
23 ability of local governments to exercise control over group living arrangements, particularly for
24 persons with disabilities (“Joint Statement”). *See* Ex. C.

25 46. This Joint Statement provided critical directions to local governments about what they
26 may and may not do in compliance with federal law. For instance, it explained that local
27 governments may generally restrict the ability of unrelated groups of people to live together (subject
28

1 to reasonable accommodations), but cannot treat groups of unrelated persons with disabilities less
2 favorably than similar groups of unrelated persons without disabilities.

3 47. Defendants did not provide any particularized explanation for withdrawing this
4 document.

5 48. Through its own search, San Francisco was able to locate a later 2016 document that
6 “updates and expands” upon the Joint Statement. *See* Joint Statement of the Department of Housing
7 and Urban Development and the Department of Justice: *State and Local Land Use Laws and*
8 *Practices and the Application of the Fair Housing Act* (Nov. 10, 2016), [https://www.justice.gov/opa/](https://www.justice.gov/opa/file/912366/download)
9 [file/912366/download](https://www.justice.gov/opa/file/912366/download). But there is material covered in the Joint Statement that does not appear to be
10 included in the 2016 document, such as a discussion of the applicability of the anti-discrimination
11 provisions of the Fair Housing Act to those claiming disability on the basis of having been
12 adjudicated as a juvenile delinquent or for having a criminal record, or those who suffer from an
13 addiction to illegal drugs. *See* Ex. C at 1.

14 49. In the absence of an explanation from Defendants for their decision to withdraw this
15 document—*e.g.*, that they believe it has been completely supplanted by the 2016 document or that the
16 Joint Statement was somehow incorrect or improper—there is no way for local governments to
17 evaluate the validity of the justification or tailor their conduct accordingly.

18 **C. Letters Concerning Standards For Assessing Citizenship Status Discrimination.**

19 50. The Immigration and Nationality Act (“INA”) generally prohibits employers—
20 including local governments—from discriminating against individuals on the basis of national origin
21 or, in the case of “protected individual[s],” on the basis of citizenship status. 8 U.S.C. § 1324b(1).

22 51. Two of the documents Defendants repealed without any explanation were letters from
23 the DOJ Civil Rights Division providing guidance about compliance with these anti-discrimination
24 provisions of the INA.

25 52. In one letter, DOJ explained that individuals who fail to apply for naturalization within
26 six months of becoming eligible to do so were not “protected individuals” within the meaning of
27 Section 1324b, but were nonetheless protected against other forms of discrimination, including
28 document abuse (which it defined as “the request for more or different documents, or the rejection of

1 reasonably genuine looking documents in the employment eligibility verification process based on
2 national original or citizenship status”). *See* Ex. D.

3 53. In the other letter, the Department provided its view on what employers were required
4 to do to conduct citizenship documentation audits in compliance with the law. For example, DOJ
5 explained that employers must complete internal audits of I-9 forms in the same manner for every
6 employee and “may not scrutinize more closely the I-9 forms and documentation of select employees
7 on the basis of national origin or citizenship status.” Ex. E at 2. The letter also stated that employers
8 cannot accept documentation that does not reasonably appear to be genuine or relate to that employee.
9 *Id.*

10 54. Defendants have not provided any explanation as to why these two letters in particular
11 were selected for rescission.

12 55. Particularly given the recent increase in Immigration and Customs Enforcement
13 (“ICE”) I-9 audits,⁷ and acting ICE Director Thomas Homan’s recent directive to ICE agents to
14 increase such worksite investigations by “four to five times,”⁸ it is critically important for
15 employers—including government employers like San Francisco—to know how to conduct internal
16 audits legally and to understand DOJ’s position on what is required of them. Without knowing why
17 Defendants rescinded these letters, employers are left to guess where DOJ stands on these timely and
18 sensitive issues.

19 **D. Guidance Regarding Lawful And Equitable Imposition Of Fines and Fees.**

20 56. When people are convicted of a crime, they are often charged thousands of dollars in
21 fines, fees, or financial penalties related to their conviction, sentence, or incarceration. But an
22 unintended consequence of this practice is that it can push people into (or deeper into) poverty.
23 These fines, fees, and penalties can trap people in a cycle of debt, and low-income individuals and
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26 ⁷ *See, e.g.,* Andrew Khouri, *Visits by federal immigration authorities are spooking California*
27 *businesses and workers*, L.A. Times (Feb. 26, 2018), <http://www.latimes.com/business/la-fi-immigration-workplace-20180226-story.html>.

28 ⁸ *See* Tal Kopan, *ICE chief pledges quadrupling or more of workplace crackdowns*, CNN.com (Oct. 17, 2017), <https://www.cnn.com/2017/10/17/politics/ice-crackdown-workplaces/index.html>.

1 people of color are often hit the hardest. Government thus becomes a driver of inequality, creating
2 additional layers of punishment for those moving through the criminal justice system.

3 57. Two of the documents Defendants withdrew without any explanation were resources to
4 help state and local governments address this problem by reforming their fines and fees practices to
5 comply with the Constitution and federal law, to avoid perpetuating poverty, and to avert unnecessary
6 deprivations of liberty and equal protection.

7 58. One was a “Dear Colleague” letter issued as part of a package “meant to support the
8 ongoing work of state judges, court administrators, policymakers and advocates in ensuring equal
9 justice for all people, regardless of financial circumstance.” Press Release No. 16-285, DOJ Office of
10 Public Affairs, *Justice Department Announces Resources to Assist State and Local Reform of Fine
11 and Fee Practices* (March 14, 2016). The letter provided guidance to state and local courts regarding
12 their legal obligations with respect to the enforcement of court fines and fees. Specifically, it set forth
13 seven requirements that had to be followed to be considered in compliance with the United States
14 Constitution and/or other federal laws. *See* Ex. F.

15 59. The other was an advisory for recipients of financial assistance from DOJ on levying
16 fines and fees on juveniles (“Juvenile Fines and Fees Advisory”). The stated intent of the advisory
17 was to assist state and local juvenile probation departments, juvenile courts, and other juvenile justice
18 agencies in ensuring that their imposition and enforcement of fines and fees did not violate the
19 Constitution or the nondiscrimination provisions associated with the acceptance of federal financial
20 assistance. To that end, it set forth DOJ’s understanding of the constitutional and statutory
21 obligations related to collecting fines and fees from juveniles, summarized the enforcement actions
22 available to DOJ in the event it discovered evidence of a violation, and offered recommendations to
23 improve the administration of juvenile fines and fees. *See* Ex. G.

24 60. These guidance documents have formed the basis for widespread reform to stem
25 unconstitutional practices. They prompted numerous states to review their policies on fines and fees.
26 The chair of Arkansas’s Joint Committee, which was tasked with this review, noted, “The DOJ letter
27 had a profound impact on every judge that read it. For those judges that perceived these issues prior
28 to the letter but were unable to generate enthusiasm for change, the letter provided a perfect platform

1 for review and modification of policies and procedures.” U.S. Commission on Civil Rights, *Targeted*
2 *Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional*
3 *Implications* 51-52 (Sept. 2017). In Texas, the court system’s administrative director remarked that
4 the Dear Colleague Letter “was very helpful and very well received by the judges across the state.”
5 Chiraag Bains, *Sessions Says to Courts: Go Ahead, Jail People Because They’re Poor*, N.Y. Times
6 (Dec. 28, 2017), [https://www.nytimes.com/2017/12/28/opinion/sessions-says-to-courts-go-ahead-jail-](https://www.nytimes.com/2017/12/28/opinion/sessions-says-to-courts-go-ahead-jail-people-because-theyre-poor.html)
7 [people-because-theyre-poor.html](https://www.nytimes.com/2017/12/28/opinion/sessions-says-to-courts-go-ahead-jail-people-because-theyre-poor.html). In addition, the American Bar Association has explicitly endorsed
8 the seven principles emphasized in these documents, while the Conference on State Court
9 Administrators refers to the Dear Colleague Letter in its policy paper on ending debtors’ prisons.

10 61. More specifically, the “Dear Colleague” letter and the Juvenile Fines and Fees
11 Advisory provided important guidance to San Francisco—and other local and state governments—
12 about criminal justice fines and fees.

13 62. San Francisco’s Adult Probation Department and Juvenile Probation Department are
14 authorized to impose and collect fees governed by these guidance documents:

- 15 • San Francisco’s Adult Probation Department is led by a Chief Probation Officer who is
16 appointed by and acts as an arm of the San Francisco Superior Court. Pursuant to state
17 law, the Adult Probation Department collects \$50 a month from adult probationers.
18 These individuals are typically charged \$1,800 upfront when they start their probation,
19 as probation typically lasts for three years.
- 20 • State and local laws also authorize the Adult Probation Department to collect fees from
21 clients for a variety of other services, including a booking fee, a criminal justice
22 administration fee, a home detention fee, and an electronic monitoring fee.
- 23 • San Francisco’s Juvenile Probation Department receives federal funding, including, in
24 recent years, funding from the United States Department of Justice Office of Justice
25 Programs.
- 26 • State and local laws authorize the Juvenile Probation Department to collect various
27 fees.

1 In other words, according to DOJ, some of the Documents contained obligations that have now been
2 removed. Accordingly, legal consequences flow from this rescission.

3 69. Without an explanation from Defendants about the rationale for the repeal of each of
4 these documents, however, we are left to “guess at what theory underl[ies] the agency’s action.” *Sec.*
5 *& Exch. Comm’n v. Chenery Corp.*, 332 U.S. 194, 196–97 (1947) (“It will not do for a court to be
6 compelled to guess at the theory underlying the agency’s action; nor can a court be expected to chisel
7 that which must be precise from what the agency has left vague and indecisive.”).

8 70. When the court “is left to guess as to the agency’s findings or reasons,” the agency’s
9 action “simply cannot be upheld.” *Time, Inc. v. U.S. Postal Serv.*, 685 F.2d 760, 773 (2d Cir. 1982)
10 (quoting *Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 851 (D.C. Cir. 1970)).

11 **COUNT ONE:**
12 **AGENCY ACTION THAT IS ARBITRARY AND CAPRICIOUS**
13 **IN VIOLATION OF 5 U.S.C. § 706(2)(A)**

13 71. The above paragraphs are incorporated herein by reference.

14 72. DOJ is an agency subject to the requirements of the APA. 5 U.S.C. § 701(b)(1).

15 73. Under 5 U.S.C. § 706(2)(A), courts shall hold unlawful and set aside agency action that
16 is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

17 74. The rescission of the Documents constitutes final agency action that is reviewable by
18 this Court.

19 75. The rescission of the Documents and actions taken by Defendants to rescind the six
20 guidance documents are arbitrary and capricious, an abuse of discretion, and not in accordance with
21 law because, among other things, Defendants failed to articulate a meaningful explanation for their
22 actions.

23 76. Under the APA, agencies must demonstrate that they engaged in reasoned decision-
24 making when reaching a determination, and this includes policy changes made through repeals. *See*
25 *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2120 (2016). The agency’s explanation for its
26 decision must be clear enough that the agency’s “path may reasonably be discerned.” *Bowman*
27 *Transp., Inc. v. Arkansas–Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974). In the absence of any
28 specific reasoning, “[i]t is not the role of the courts to speculate on reasons that might have supported

1 an agency’s decision,” and the action must be deemed arbitrary and capricious. *Encino Motorcars*,
2 136 S. Ct. at 2127.

3 77. This is particularly true where, as here, the rescinded policies engendered reliance
4 interests. *See Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1209 (2015) (“[T]he APA requires an
5 agency to provide more substantial justification when ‘its new policy rests upon factual findings that
6 contradict those which underlay its prior policy; or when its prior policy has engendered serious
7 reliance interests that must be taken into account. It would be arbitrary and capricious to ignore such
8 matters.” *Id.* (quoting *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009))).

9 78. San Francisco and its residents were harmed and continue to be harmed by these
10 unlawful acts.

11 **PRAYER FOR RELIEF**

12 Wherefore, San Francisco prays that the Court grant the following relief:

- 13 1. Vacate and set aside the rescission of the Documents and any action taken by
14 Defendants to implement rescission of the Documents;
- 15 2. Declare that the rescission of the Documents and actions taken by Defendants to
16 rescind the Documents are void and without legal force or effect;
- 17 3. Declare that the rescission of the Documents and actions taken by Defendants to
18 rescind the Documents are arbitrary, capricious, an abuse of discretion, and otherwise not in
19 accordance with law in violation of 5 U.S.C. § 706;
- 20 4. Enjoin and restrain Defendants, their agents, servants, employees, attorneys, and all
21 persons in active concert or participation with any of them, from implementing or enforcing the
22 rescission of the Documents and from taking any other action to rescind the Documents that is not in
23 compliance with applicable law;
- 24 5. Award San Francisco reasonable costs and attorneys’ fees; and

25 //
26 //
27 //
28 //

1 6. Grant any other further relief that the Court deems fit and proper.

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3 Dated: April 5, 2018

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