

# THE CRIMINALIZATION OF HOMELESSNESS

## SPRING 2024

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(2)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

December 1988

MICHAEL POTTINGER,  
PETER CARTER, and BERRY  
YOUNG,

Plaintiffs,

vs.

CITY OF MIAMI,

Defendant.

---

CASE NO. 88-2406-CIV-ATKINS

SECOND AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE AND  
COMPENSATORY RELIEF/CLASS ACTION

COME NOW the Plaintiffs, MICHAEL POTTINGER, PETER CARTER, and BERRY YOUNG, by undersigned counsel, and sue the Defendant, CITY OF MIAMI, and state:

JURISDICTION

1. This action arises under the United States Constitution, Amendments 1, 4, 5, 6, 9, and 14; under the Florida Constitution, Article 1, Secs. 2, 5, 9, 12, 16, 17, and 23; and under 42 U.S.C. sections 1983 and 1988, as hereinafter more fully appears.

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343.

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WEINER ROBBINS TUNNEY & ROSS P.A.

3. This Court has pendent jurisdiction over the Plaintiff's inextricably intertwined state claims.

#### PARTIES

4. MESSRS. POTTINGER, CARTER, and YOUNG are individuals over the age of eighteen, and residents of the City of Miami, County of Dade, State of Florida. They have (or had during the pendency of the original complaint) no home or shelter, nor any means of acquiring home or shelter. They reside (or have resided) on public streets, alleys, walkways, and in parks located within the geographic area known as the City of Miami.

5. Defendant, CITY OF MIAMI, is a municipality duly incorporated under the laws of the State of Florida.

6. This Defendant maintains a police department known as the City of Miami Police Department. This police department has the traditional authority of police forces to enforce Florida Statutes, Dade County Ordinances, and City of Miami Ordinances.

#### VENUE

7. Venue properly lies in this Court pursuant to 28 U.S.C. section 1391(b).

#### CLASS ACTION ALLEGATIONS

8. This action is a class action based upon Rule 23 of the Federal Rules of Civil Procedure in that the class is so

numerous that joinder of all members is impractical, that there are questions of both law and fact that are common to the class, and that the claims of the representative parties of the Plaintiffs are typical of the claims of the class and further, that the representative parties will fairly and adequately protect the interests of the class.

9. This class action is maintainable under Rule 23(b)(2) in that the party opposing the class has acted or will act on grounds generally applicable to the class thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

10. The class consists of approximately 5,000 men and women who are homeless and living in the City of Miami.

11. The Plaintiffs have been arrested in the past and/or expect to be arrested in the future for sleeping in public and other ordinary and essential daily activities that arise from their homeless condition and which they are forced to carry out in public. The class that Plaintiffs represent have also been, or expect to be, arrested in connection with sleeping and engaging in these same fundamental life activities in public. The Plaintiffs have endured the same penury, degradation, outrage and pain as all of the other members of the class.

12. The questions of law and fact to be determined in this cause are common to the class, in that the Defendant's arrests and harassment of its homeless and engaging in other

ordinary and essential activities of daily living, for sleeping in public where the city has failed and refused to provide adequate shelter and other essential necessities for its homeless, is a violation, under color of state law of freedoms and rights guaranteed to the Plaintiffs and the class under the United States Constitution, Amendments 1, 4, 5, 6, 9, and 14, and under the Florida Constitution, Article 1, Sections 2, 5, 9, 12, 17, and 23.

13. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The representative parties know of no conflict of interest among members of the class with regard to the issues in this case.

#### GENERAL FACTUAL ALLEGATIONS

14. Plaintiffs, and those they represent are homeless because (1) they are mentally disabled from employment, many having been deinstitutionalized and yet provided no shelter; (2) they are physically disabled from employment; (3) they are seeking but are currently unable to find employment; or (4) they are employed, but at such a low rate of pay that they are unable to secure shelter. They are sick, hungry and vulnerable to the elements.

15. The deprivations suffered by Plaintiffs and their class are so poignant and severe as to make them easily recognizable as homeless persons. They generally carry all of their meager possessions on their persons or in bags or sacks.

16. The Plaintiffs tend to reside and congregate near several privately funded institutions and organizations that provide free food, shelter, medical care, counsel, and other essential assistance to these people. One such entity is the Camillus House located at 726 Northeast 1st Avenue.

17. The Defendant has made no adequate provision for the shelter and other essential necessities of Plaintiffs and their class.

18. The Defendant has a custom, practice and policy of arresting, harrassing and otherwise interfering with homeless people for engaging in the ordinary and essential activities of daily life in the public places where Plaintiffs are forced to live. Plaintiffs and the class have been and continue to be arrested and charged with, for example, being in a public park after hours, City of Miami Code Section 38-3; loitering and prowling, Florida Statutes Section 856.021 and City of Miami Code Sections 37-34 and 35; offenses against property, City of Miami Code Section 21-30; and sleeping in public, City of Miami Code Section 37-63; based solely on the fact that they sleep, sit, eat, talk, tend to personal needs, associate with friends, and raise families in public. Sleeping is fundamental to the

maintenance of life. It is legal when conducted within one's home.

19. The vast majority of arrests on these charges are never brought to trial. Rather, Plaintiffs and the class are routed from the streets which are their homes and taken to jail. Many are released there without further, official process. Others are incarcerated and then, upon arraignment, by virtue of their homelessness and related circumstances, are coerced by judges and prosecutors into pleading guilty in exchange for a sentence to time served. Thus, Plaintiffs and their class have never had the opportunity to raise any of their valid and substantial defenses to these charges: e.g., necessity, duress, justification, defense of self, and defense of others.

20. In addition to arresting and harassing the Plaintiffs, the Defendant has a custom, practice, and policy of seizing and destroying the personal property of the Plaintiffs, including identification, clothing, medication, food, and bedding materials, before, during, and after its encounters with the Plaintiff. Alternatively, upon arrest of the Plaintiffs by the Defendant, the Plaintiffs are forced, by virtue of their arrest, to abandon all of their personal belongings at the public sites of their arrests. The foreseeable and inevitable result of either of these scenarios is that incident to the arrest of homeless persons all of their belongings are lost forever.

21. By arresting homeless persons and removing them or

temporarily incarcerating them and by seizing and destroying their property, the Defendant has not legitimately exercised its police powers to protect the health, safety and welfare of the people of this city. Rather, the Defendant is harassing, interfering with, and intimidating homeless persons with no other object than to punish them for being without shelter or the means to acquire it.

22. The Orange Bowl Committee holds a parade on December 31 of each year within the City of Miami. It has become the custom, policy, practice and procedure of the Defendant's Police Department, during the week prior to the Orange Bowl Parade, to harass, intimidate, and arrest homeless persons residing in or near the parade route with the intention of having them physically removed from the scrutiny of the media and the non-homeless during the festivities.

23. In particular, on December 30, 1987, the night before the parade, the Defendant's police officers arrested all the homeless persons sleeping on the sidewalk adjacent to Camillus House, as described above. The streets were blocked off to prevent escape. The homeless persons were booked, their church-issued blankets were confiscated, and they were released in the middle of the night, far from Camillus House, with no pending charges and no protection against the elements.

24. Similar harassment also occurred during the week prior to September 10, 1987, the date the Pope arrived in the

City of Miami.

25. The Plaintiffs and the class have been arrested and removed from the area in connection with such festivities and on other occasions, and/or reasonably expect to be arrested this year as the Orange Bowl parade draws near, and at other times in the future.

26. The Defendant's customs, practices, and policies described in this complaint have been undertaken and executed willfully, wantonly, and with reckless disregard of the rights and feelings of the Plaintiffs.

27. The above-mentioned actions by the Defendant have caused and will continue to cause great humiliation, psychological and emotional suffering, degradation, pain and injury to the Plaintiffs and the class they represent.

#### COUNT I

##### CRUEL AND UNUSUAL PUNISHMENT

28. Plaintiffs reaver and reallege all preceding paragraphs.

29. Forces beyond the Plaintiffs' control, such as illness, unemployment, penury, and the cruel and wanton failure of the Defendant to provide any shelter for them have compelled the Plaintiffs to live and sleep in public.

30. Sleeping, eating, bathing, and associating with friends and family are irreducibly necessary to the maintenance of life. They are unquestionably legal when conducted within a



shelter. They constitute an involuntary manifestation of the Plaintiffs' status as homeless persons.

31. The Defendant's pattern of harassing, arresting, and incarcerating involuntarily homeless persons for sleeping and engaging in other ordinary and essential activities of daily life in public, performed under color of state law by the Defendant, constitutes punishment of Plaintiffs based on their status as homeless persons and, as such, is cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 17, of the Florida Constitution.

#### COUNT II

##### MALICIOUS ABUSE OF PROCESS

32. The Plaintiffs herein reaver and reallege all preceding paragraphs.

33. By arresting the Plaintiffs, the Defendant, through its agent, the City of Miami Police Department, does not intend to simply enforce the laws of the State of Florida and local ordinances of Dade County and City of Miami but, instead, intends to maliciously use these arrests as a means of purging its public streets of persons whom it perceives as being undesirable or unsightly and as a means of harassing, intimidating, and temporarily dislocating the Plaintiffs.

34. The issuance of process for the illegitimate purpose of harassing, intimidating, and punishing the Plaintiffs because

of their status as homeless persons constitutes a malicious abuse and perversion of process.

35. This malicious abuse, and perversion of process is performed by Defendant under color of state law, and as such constitutes a denial of procedural due process, and a deprivation of liberty, in violation of Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

### COUNT III

#### UNLAWFUL SEARCH AND SEIZURE OF THE PLAINTIFFS

36. Plaintiffs reaver and reallege all preceding paragraphs.

37. In detaining and arresting homeless persons for conduct which constitutes the ordinary and essential activities of daily life, the Defendant intends to harass and punish Plaintiffs and their class for being homeless. The basis for any particular detention or arrest - sleeping on the sidewalk or sleeping in the park, obstructing the sidewalks, or loitering - is a pure pretext.

38. No reasonable law enforcement officer would detain these Plaintiffs or their class for sleeping and conducting other ordinary and essential daily activities in public in the absence of the illegitimate and invalid purpose of harassing, interfering with and punishing the homeless.

39. The Defendant's policy, pattern, and practice of effecting these purely pretextual detentions and arrests under color of state law constitutes a violation of Plaintiffs' rights to be free from unreasonable search and seizure, as protected by the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Sections 12 and 23 of the Florida Constitution.

#### COUNT IV

##### UNLAWFUL SEIZURE AND TAKING OF THE PLAINTIFFS' PROPERTY

40. Plaintiffs reaver and reallege all preceding paragraphs.

41. The Defendant's seizure of the Plaintiffs' property violates the Fourth and Fourteenth Amendments, of the United States Constitution, Article I, Section 12 of the Florida Constitution because it is accomplished without warrants or probable cause.

42. The Defendant's destruction of the Plaintiffs' property and action compelling abandonment of their property violates the Fifth and Fourteenth Amendment's command that without payment or compensation, private property shall not be taken for public use, without just compensation.

COUNT V

VIOLATION OF DUE PROCESS RIGHT TO PRIVACY AND AUTONOMY

43. Plaintiffs reaver and reallege all preceding paragraphs.

44. By virtue of their homelessness, the Plaintiffs are forced to engage in the most private and fundamental aspects of their lives, including sleeping, eating, bathing, associating with family and friends, practicing religion and expressing their opinions on the public streets, sidewalks and adjacent areas of the City of Miami.

45. The Defendant, by accosting, harassing, arresting and otherwise interfering with the daily existence and affairs of the Plaintiffs and their class is violating the Plaintiffs' rights to privacy, autonomy, and to be left alone in these fundamental aspects of their lives without adequate justification.

46. This gross and unwarranted intrusion by the Defendant into the Plaintiffs' lives violates the Plaintiffs' rights protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 2, 3, 4, 5, 9, 12, and 23 of the Florida Constitution.

COUNT VI

VIOLATION OF EQUAL PROTECTION

47. Plaintiffs reaver and reallege all preceding paragraphs.

48. The activities for which Defendant has effected the arrests of Plaintiffs and their class - sleeping, eating, bathing, standing on the sidewalks, associating with family and friends - constitute fundamental and essential rights and liberties protected by the Constitution of the United States.

49. The Defendant does not and will not arrest non-homeless people who engage in precisely these activities for which the Plaintiffs have in the past been arrested and reasonably expect in the future to be arrested. In particular, a non-homeless person who visibly possesses more means than do Plaintiffs are and will continue to be permitted to engage in activities on public property such as standing, walking, talking, associating and assembling, and remain secure from arrest for being in the parks after hours, trespassing, obstruction of the street, littering, loitering and lounging. A homeless person, visibly without any means and shelter, will be arrested for precisely those same activities.

50. In distinguishing between homeless and non-homeless persons for the purpose of effecting past and reasonably anticipated future arrests, Defendant has irrationally,

arbitrarily anticipated future arrests, Defendants has irrationally, arbitrarily and capriciously distinguished between the homeless and non-homeless persons. This distinction, made in the absence of sufficient justification, constitutes a violation of Plaintiffs' rights to equal protection of the laws, as guaranteed by the Fourteenth Amendment to the U.S. Constitution, and Article I, section 9 of the Florida Constitution.

DEMAND FOR JURY TRIAL

51. The Plaintiffs hereby demand a trial by jury for all issues so triable.

WHEREFORE, the Plaintiffs pray that this Court provide them the following relief:

A. A declaratory judgment declaring that the Defendant's activities, conduct, procedures, and policies specified herein are illegal and unconstitutional.

B. A permanent injunction prohibiting the Defendant from engaging in the activities, conduct, and procedures specified herein and specifically prohibiting the Defendant from arresting or otherwise harassing and intimidating the Plaintiffs and the class they represent for sleeping on and about the public streets and parks of Miami.

C. Compensatory damages for personal property of the Plaintiffs that has been seized, destroyed, or otherwise lost as a result of the Defendant's activities as well as for their

psychological and emotional distress, pain and injury.

D. An award of reasonable attorney's fees and costs incurred in filing and prosecuting this lawsuit.

Respectfully submitted,

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oughly—not just by federal agencies, but by state agencies as well. Each of them has approved the project, there were some relatively few concerns of some of the agencies at some point in time, but those have been fully addressed and dispelled.

At the time of the hearing in the instant case the City had received permits for this project from the Florida Department of Environmental Regulations (DER), the Florida Department of Natural Resources (DNR), the United States Army Corps of Engineers (Corps); additionally, it had received funding from the Florida legislature and the Governor. The project has been the subject of two administrative proceedings at the state level, two full rounds of notice comment proceedings, which included public hearings, at the federal level. The Environmental Impact Statement of the Corps has been detailed and well documented and it has been reviewed, pursuant to various regulatory procedures, by several other federal agencies, including the United States Fish & Wildlife Service (FWS) and the United States Environmental Protection Agency (EPA).

Without counting the pages, but only estimating, the record in this case is extensive and must number in the thousands of pages at this point in time. The matter has not come to this court with an absence of tracks on the trail. Instead, they are many. Plaintiffs in this case bear the strong burden of showing before a preliminary injunction would lie in their favor that "(1) a substantial likelihood that Plaintiff would prevail on the merits, (2) a substantial threat that Plaintiffs will suffer irreparable injury if the injunction is not granted (3) that the threatened injury to Plaintiffs outweighs the threatened harm the injunction may do to Defendant and (4) that granting the preliminary injunction would not disserve the public interest." *U.S. v. Lambert*, 695 F.2d 536, 539 (11th Cir.1983); *Canal Authority v. Callaway*, 489 F.2d 567, 572 (5th Cir.1974). In fact, the pattern of beach erosion as well as the resulting higher percentage of relocated turtle nests annually indicates any delay would disserve the public interest.

The preliminary injunction is an extraordinary and drastic remedy and granting it is the exception rather than the rule. Plaintiffs must clearly carry the burden of persuasion.

Alas for Plaintiffs. Not only have they failed to carry all four prerequisites in order for preliminary injunction to issue, but this court finds that they have failed to carry any of them. Therefore, Plaintiffs' motion for preliminary injunction must be denied.

As much as the parties consented to a consolidation of the preliminary injunction and permanent injunction on the issues presented in this case, *viz.*, violation of the Endangered Species Act, consideration of recreational alternatives, and width of the beach, the prayer for permanent injunction must also be denied.

Plaintiffs reserved certain matters for consideration by the court in the stipulation and the parties are to prepare those issues for the court expeditiously.

DONE AND ORDERED.



Michael POTTINGER, Peter Carter, and  
Berry Young, Plaintiffs,

v.

CITY OF MIAMI, Defendant.

No. 88-2406-Civ.

United States District Court,  
S.D. Florida.

July 21, 1989.

Matter came before court on motion for class certification in civil rights action. The District Court, Atkins, J., held that: (1) description of class as those homeless individuals who had been or expected to be arrested for conduct essential to their daily lives and who resided in narrowly drawn

geographic boundaries within city sufficiently described class members to satisfy class action requirements; (2) commonality requirement for class action was satisfied; and (3) adequacy of representation requirement was satisfied even though two of three named plaintiffs had subsequently secured employment and shelter.

Motion granted.

**1. Federal Civil Procedure §176**

To maintain class action, description of class must be sufficiently definite to enable court to determine if particular individual is member of proposed class. Fed.Rules Civ. Proc.Rule 23, 28 U.S.C.A.

**2. Federal Civil Procedure §176**

Description of class is sufficiently definite for class action purposes of any member of proposed class would have requisite standing to sue on its own behalf or in its own right. Fed.Rules Civ.Proc.Rule 23, 28 U.S.C.A.

**3. Federal Civil Procedure §181**

Description of class as those homeless individuals who had been or expected to be arrested for conduct essential to their daily lives and who resided in narrowly drawn geographic boundaries within city sufficiently described class member to satisfy class action requirements. Fed.Rules Civ. Proc.Rule 23, 28 U.S.C.A.

**4. Federal Civil Procedure §163**

No specific number and no precise count is needed to sustain numerosity requirement for class actions. Fed.Rules Civ.Proc.Rule 23(a), (a)(1), 28 U.S.C.A.

**5. Federal Civil Procedure §181**

Numerosity requirement for class certification was met in connection with civil rights action challenging City's arrest practices with respect to approximately 5,000 homeless persons who resided in narrowly defined geographic area. Fed.Rules Civ. Proc.Rule 23(a), (a)(1), 28 U.S.C.A.

**6. Federal Civil Procedure §165**

Although question of fact or law common to members of proposed class is required for class action, it is not necessary

that legal claims be identical. Fed.Rules Civ.Proc.Rule 23(a), 28 U.S.C.A.

**7. Federal Civil Procedure §165**

Mere presence of factual differences will not defeat maintenance of class action if there are common questions of law. Fed.Rules Civ.Proc.Rule 23(a), 28 U.S.C.A.

**8. Federal Civil Procedure §181**

Commonality requirement for class action was satisfied by plaintiffs who alleged that they were homeless and that as result they had been and would continue to be arrested solely for conduct that was fundamental to maintenance of life. Fed.Rules Civ.Proc.Rule 23(a), 28 U.S.C.A.

**9. Federal Civil Procedure §164**

As long as legal and remedial theories is same for all class members, mere presence of factual differences will not defeat typicality required for class action. Fed. Rules Civ.Proc.Rule 23(a), (a)(3), 28 U.S.C.A.

**10. Federal Civil Procedure §164**

Adequacy of representation requirement for class action is met if name representatives have interest in common with proposed class members and representatives and their qualified attorneys will properly prosecute class action. Fed.Rules Civ.Proc.Rule 23(a), (a)(3), 28 U.S.C.A.

**11. Federal Civil Procedure §181**

Fact that two of three named plaintiffs in class action challenging City's arrest procedures with respect to approximately 5,000 homeless persons who resided in narrowly defined geographic area had subsequently secured employment and shelter did not defeat adequacy of representation required for class action; plaintiffs would continue to vigorously prosecute action since there was some likelihood that they might become involved in same controversy in future despite their current lack of personal stake in outcome. Fed.Rules Civ. Proc.Rule 23(a), (a)(3), 28 U.S.C.A.

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Miami Chapter of the American Civil Liberties Union by Benjamin S. Waxman, Daniel Jonas and Maurice Rosen, Miami Beach,

Fla., and Weiner Robbins Tunkey & Ross, P.A. by Jeffrey S. Weiner, Miami, Fla., for plaintiffs.

Jorge L. Fernandez, City Atty., Leon M. Firtel, Asst. City Atty., Miami, Fla., for defendant.

ORDER GRANTING PLAINTIFFS'  
MOTION FOR CERTIFICATION  
OF CLASS ACTION

ATKINS, District Judge.

THIS CAUSE is before the court on the plaintiffs' motion for class certification. After reviewing the motion, memoranda, and the relevant law, it is

ORDERED AND ADJUDGED that the motion is GRANTED.

This action for injunctive and declaratory relief was initiated by the plaintiffs Michael Pottinger, Peter Carter, and Berry Young against the defendant City of Miami. The plaintiffs seek class certification for themselves and approximately 5,000 homeless men and women who reside on the public streets in the City of Miami in the narrowly defined "geographic area bordered on the North by Interstate 395, on the South by Flagler Street, on the East by Biscayne Bay, and on the west by Interstate 95." Plaintiffs allege that they "have been arrested in the past and/or expect to be arrested in the future" and seek to represent those who "have also been, or expect to be, arrested" for conduct arising from their homeless condition on the public streets.

The plaintiffs contend that the action of the City of Miami ("City") in making arrests for such ordinary and essential conduct violates their freedoms and rights guaranteed under the first, fourth, fifth, sixth, ninth, and fourteenth amendments to the Constitution of the United States and Article 1, sections 2, 5, 9, 12, 17, and 23 of the Florida Constitution.

The prerequisites to a class action are outlined in Rule 23 of the Federal Rules of Civil Procedure:

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is

impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed.R.Civ.P. 23(a). See *Johnson v. American Credit Co. of Georgia*, 581 F.2d 526, 530 (5th Cir.1978). Under Rule 23(b)(2), class certification is appropriate if it is shown that the City "has acted or refused to act on grounds generally applicable to the class" thereby entitling the class to injunctive or declaratory relief. 581 F.2d at 531.

Plaintiffs allege that the City has failed and refused to provide the homeless with adequate shelter and other necessities which are essential to their daily life activities. Furthermore, the plaintiffs argue, the City has made arrests, under color of state law, of homeless persons for conduct which arises from their daily lives on the public streets.

[1,2] The City asserts that a class action cannot be maintained because the plaintiffs have failed to define adequately the proposed class. The description of the class must be sufficiently definite to enable the court to determine if a particular individual is a member of the proposed class. See *Jagnandan v. Giles*, 379 F.Supp. 1178, 1184 (N.D.Miss.1974), *aff'd* 538 F.2d 1166 (5th Cir.1976). The description of the class is sufficiently definite if any member of the proposed class would have the requisite standing to sue on his own behalf or "in his own right." See *Slaughter v. Levine*, 598 F.Supp. 1035, 1041 (D.Minn.1984).

This court concludes that the named plaintiffs have sufficiently described the class to be certified. See, e.g., *Orantes-Hernandez v. Smith*, 541 F.Supp. 351 (C.D. Cal.1982); *Hairston v. Hutzler*, 334 F.Supp. 251 (W.D.Pa.1971); *Broughton v. Brewer*, 298 F.Supp. 260 (N.D.Ala.1969); *Thompson v. City of Chicago*, 104 F.R.D. 404, 405 n. 1 (N.D.Ill.1984). It is appropriate to define narrowly the class description in terms of the primary issue in the case.

See *Lewis v. Gross*, 663 F.Supp. 1164, 1171 (E.D.N.Y.1986).

[3] The plaintiffs have described the class as those homeless individuals who have been or expect to be arrested for conduct essential to their daily lives and who reside in the narrowly drawn geographic boundaries within the City of Miami. The description adequately defines the class whose members will be readily ascertainable. The court can readily determine whether a particular individual is a member of the proposed class who would have standing to bring an action on his own behalf. The class is neither vague nor overbroad and is sufficiently identifiable.

[4,5] The City also challenges some of the fundamental requirements of Rule 23(a). The plaintiffs have the burden of proving all of the elements required for class certification. *Slaughter*, 598 F.Supp. at 1041. Rule 23(a)(1) requires that the proposed class is so numerous that joinder of all class members is impracticable. The court can make a subjective determination that joinder is impracticable based on considerations of "expediency and the inconvenience of trying individual suits." *Slaughter*, 598 F.Supp. at 1042. No specific number and no precise count is needed to sustain the numerosity requirement. *Lewis*, 663 F.Supp. at 1169. Several courts have granted class certification for as few as twenty five members. *Slaughter*, 598 F.Supp. at 1042. The court may examine statistical data and then draw reasonable inferences from the facts in determining whether the numerosity requirement has been met. *Lewis*, 663 F.Supp. at 1169. The court finds that the numerosity requirement has been met based upon a reasonable inference of the studies conducted of the homeless population and the nature of homelessness. Important interests of judicial economy are also served by certification of the proposed class. Class certification will prevent a multiplicity of suits against the same defendant for the same type of alleged wrongdoing.

[6] The second requirement of Rule 23(a) requires a question of law or fact common to the members of the proposed

class. It is not necessary, however, that the legal claims be identical. *Johnson*, 581 F.2d at 532. No qualitative or quantitative test will determine commonality. *Slaughter*, 598 F.Supp. at 1044. It is only necessary to find at least one issue common to all class members. 598 F.Supp. at 1044. The plaintiffs assert the following questions of law or fact common to the class members:

[T]he city's arrest and harassment of its homeless for conduct which constitutes the normal, essentially daily activities of life on the streets, where the city has failed or refused to provide adequate shelter and other essential necessities for its homeless, is a violation, under color of state law, of freedoms and rights guaranteed to Plaintiffs and the class, under the United States Constitution, Amendment[s] 1, 2, 4, 5, 6, 9, and 14, and under the Florida Constitution, Article 1, Sections 2, 5, 9, 12, 17, and 23.

See Complaint at para. 12-13.

[7] The mere presence of factual differences will not defeat the maintenance of a class action if there are common questions of law. *Coley v. Clinton*, 635 F.2d 1364, 1378 (8th Cir.1980). Rule 23(a)(2) does not require that there are questions of law and fact common to the class but rather only requires that there be either legal issue[s] or factual issue[s] common to the class.

[8] The status of the plaintiffs as homeless is a fact common to the class. As homeless, they allege that they have been and will continue to be arrested solely for conduct that is fundamental to the maintenance of life. See Plaintiffs' Memoranda at sec. B. This single factual issue is sufficient to sustain class certification. See *Lewis*, 663 F.Supp. at 1167. It is irrelevant that those members arrested are charged with a variety of crimes such as loitering, trespassing, being in the park after hours, and vagrancy as long as the common factual circumstances of their homelessness subjects them to such arrest. The plaintiffs, under the circumstances before this court, have met the burden of demonstrating the existence of a common issue.

[9] The plaintiffs must also show that their claims are typical of the claims of the class members in order to satisfy the requirement of Rule 23(a)(3). Under this rule, the plaintiffs' claims are typical if they arise "from the same course of conduct that gives rise to the claims of other class members and [are] based on the same legal theory and if [their] interests are not antagonistic to those of the class." *See Lewis*, 663 F.Supp. at 1168. The plaintiffs claim that they have been arrested and expect to be arrested in the future for conduct which arises from their status as homeless persons. The plaintiffs seek to represent class members who have suffered and will suffer the same arrests. The interests of the representative plaintiffs and the class are not antagonistic. As long as the "legal" or "remedial" theory is the same for all class members, the mere presence of factual differences will not defeat typicality.

The claims of the named plaintiffs arise out of the same legal theory as that of the proposed class members and so the plaintiffs have met the typicality requirement of Rule 23(a)(3).

[10] The fourth requirement of Rule 23(a) ensures that the representative parties will fairly and adequately protect the interests of the class. The "adequacy of representation" requirement is met if the named representatives have interests in common with the proposed class members and the representatives and their qualified attorneys will properly prosecute the class action. *Gonzales v. Cassidy*, 474 F.2d 67, 72 (5th Cir.1973). The plaintiffs are seeking the same type of declaratory and injunctive relief for themselves as they seek for the class members.

[11] At the time that the plaintiffs filed their complaint, the named plaintiffs were homeless and identifiable members of the proposed class. It is irrelevant that two of the three named plaintiffs have subsequently secured employment and shelter. The named plaintiffs may continue to litigate the class certification issue even though they have lost their "personal stake" in the outcome because their claim

on the merits is "capable of repetition, yet evading review." *United States Parole Commission v. Geraghty*, 445 U.S. 388, 398-99, 100 S.Ct. 1202, 1209-10, 63 L.Ed.2d 479 (1980). Courts have applied the "capable of repetition, yet evading review" doctrine and allowed a plaintiff to continue in litigation despite lack of a current personal stake when the named plaintiff had a personal stake at the outset of the action and where the claim may arise against with regard to that plaintiff. *Id.*

The named plaintiffs will continue to vigorously prosecute the action since there is some likelihood that they might become involved in the same controversy in the future despite their current lack of a personal stake in the outcome. *Geraghty*, 445 U.S. at 398-99, 100 S.Ct. at 1209-10. Thus, the fact that the named plaintiffs Carter and Pottinger are not presently homeless does not defeat the class since the transitory nature of homelessness makes them susceptible to the condition in the future.

The fact that the City of Miami Police Department has never arrested the plaintiff Berry Young is immaterial since the class is defined in terms of those homeless persons who "have been arrested or expect to be arrested." The plaintiffs have demonstrated that others of the class may well be homeless and part of the class on one day, obtain temporary shelter that would remove them from the class, and once again reenter the class upon losing their temporary homes. *See Plaintiffs' Supplemental Memorandum* at p. 14.

The plaintiffs are homeless persons who are susceptible to arrest and the class members have experienced and continue to experience similar treatment. This court finds that the interests of the named plaintiffs are common to those of the proposed class and the plaintiffs' attorneys are familiar with the type of issues presented in this litigation and "have previously litigated constitutional and statutory issues in federal suits." This court finds that the adequacy of representation under Rule 23(a)(4) has been met because the interests of the named plaintiffs and the class members are not antagonistic and the plaintiffs

have qualified and experienced counsel able to prosecute the action on behalf of the entire class.

Finally, the City asks this court to exercise its discretion and deny class certification since granting the requested relief will benefit all class members even without class certification. *Women's Health Center of West City v. Webster*, 670 F.Supp. 845, 852 (E.D.Mo.1987). This court has limited discretion to deny class certification on the basis of the provisions of Rule 23(b)(2). *Slaughter*, 598 F.Supp. at 1045. Under Rule 23(c), a court may amend or alter the definition of the class at anytime prior to rendering a decision on the merits. *Lewis*, 663 F.Supp. at 1170. This court retains the discretion to modify the class certification to conform with subsequent developments in the litigation. *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 160, 102 S.Ct. 2364, 2372, 72 L.Ed.2d 740 (1982). One of the primary purposes of the class action mechanism is to advance the "efficiency" and "economy" of litigation. 457 U.S. at 159, 102 S.Ct. at 2371.

The class certified shall consist of homeless persons who reside or will reside on the streets, sidewalks, parks, and in other public places in the geographic area bound on the north by Interstate 95, on the south by Flagler Street, on the east by Biscayne Bay, and on the west by Interstate 95, within the City of Miami, who have been, expect to be, or will be arrested, harassed, or otherwise interfered with by members of the City of Miami Police Department for engaging in the ordinary and essential activities of daily living in public due to the lack of other adequate alternatives.

DONE AND ORDERED.



Nelson CARDONA, Plaintiff,

v.

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.,  
Nydia Gonzalez, Max Belin and Jim  
Radulski, Defendants.

No. 89-0843-CIV.

United States District Court,  
S.D. Florida.

Aug. 8, 1989.

Former employee, who had been denied promotion, brought federal civil rights action against employer and its managerial employees, alleging racial discrimination. Defendants moved to dismiss. The District Court, James Lawrence King, Chief Judge, held that: (1) protections of federal civil rights statute applied to employment discrimination between Colombians and Cubans, even though they are both members of Latin race, and (2) employee was not required to specifically plead that discriminatory promotion practices of employer denied employee of opportunity to enter into new contract with employer.

Motion denied.

#### 1. Civil Rights ⇐104

Protections of federal civil rights statute applied to discrimination between Colombians and Cubans, even though they are both members of Latin race, and therefore employee of Colombian national origin could bring employment discrimination action against employer which alleged that employer discriminated against employee in favor of employees of Cuban national origin. 42 U.S.C.A. § 1981.

#### 2. Civil Rights ⇐235(3)

To state cause of action for employment discrimination based on race, employee was not required to specifically plead that alleged discriminatory promotion practices of employer denied employee opportunity to enter into new contract with employer, even though promotion discrimination claim is actionable only where it stems

and when they were arraigned before a federal magistrate did not constitute unnecessary delay. Therefore, the statements made during interrogation will not be suppressed.

IT IS SO ORDERED.



Michael POTTINGER, Peter Carter,  
Berry Young, et al., Plaintiffs,

v.

CITY OF MIAMI, Defendant.

No. 88-2406-CIV-ATKINS.

United States District Court,  
S.D. Florida.

Nov. 16, 1992.

Class action was brought under § 1983 against city on behalf of homeless persons living in city, alleging violations of constitutional rights in connection with arrests and seizures of property. The District Court, Atkins, Senior District Judge, held that: (1) city's practice of arresting homeless persons for performing such activities as sleeping, standing, and congregating in public places violated Eighth Amendment and right to travel; (2) ordinances under which homeless persons were arrested were unconstitutionally overbroad; (3) homeless persons' privacy rights were not violated; and (4) seizures of homeless persons' personal belongings violated Fourth Amendment.

Ordered accordingly.

#### 1. Civil Rights ⇐206(3)

Local government may be liable under § 1983 when execution of government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts injury. 42 U.S.C.A. § 1983.

#### 2. Civil Rights ⇐206(3)

To establish government policy or custom, for execution of which government may be held liable under § 1983, plaintiffs must show persistent and widespread practice; random acts and isolated incidents are insufficient. 42 U.S.C.A. § 1983.

#### 3. Civil Rights ⇐206(4)

City's continued failure to prevent improper police conduct when it has knowledge of that conduct is type of informal policy or custom that is actionable under § 1983. 42 U.S.C.A. § 1983.

#### 4. Civil Rights ⇐206(3)

Homeless persons established that unconstitutional arrests and property seizures by city police were executed pursuant to city custom or policy, so as to subject city to liability under § 1983; proof that arrests and seizures were not random isolated acts included memoranda directed to high-ranking police department officials, and evidence of city's policies of driving homeless persons from public areas and eliminating food distribution as strategy to disperse homeless. 42 U.S.C.A. § 1983.

#### 5. Criminal Law ⇐1213.7

Eighth Amendment ban against cruel and unusual punishment was violated by city's arrests of homeless persons under various ordinances prohibiting them from lying down, sleeping, standing, sitting or performing other essential, life-sustaining activities in any public place at any time. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

#### 6. Process ⇐168

Action for abuse of process lies if prosecution is initiated legitimately but is thereafter used for purpose other than that intended by law.

#### 7. Process ⇐168

Unlike malicious prosecution, tort of abuse of process does not involve bringing action without justification; rather, abuse of process is misuse of process justified in itself for end other than that which it was designed to accomplish.

**8. Process** ⇨168

Proof of lack of probable cause is not required to establish malicious abuse of process.

**9. Process** ⇨168

No abuse of process exists when process is used to accomplish result for which it is created, regardless of incidental motive of spite or ulterior purpose.

**10. Process** ⇨168

For purposes of action for malicious abuse of process, misuse must occur after process is issued.

**11. Process** ⇨168

Homeless persons who alleged that they were arrested for unlawful purpose of harassing and intimidating them in order to purge them from city streets and parks could not recover against city under theory of malicious abuse of process; city was not shown to have committed any definite act constituting alleged misuse that occurred after issuance of process.

**12. Arrest** ⇨63.1

Proper inquiry for determining whether or not seizure is pretextual is not whether officer could validly have made seizure, but whether under same circumstances reasonable officer would have made seizure in absence of invalid purpose. West's F.S.A. Const. Art. 1, § 2; U.S.C.A. Const.Amend. 4.

**13. Arrest** ⇨63.4(1)

Objectively reasonable seizure is not invalid just because officer acts out of improper motivation; rather, determination of whether Fourth Amendment violation has occurred requires objective assessment of officer's actions in light of facts and circumstances confronting him at time, and not on officer's actual state of mind at time of challenged action taken. West's F.S.A. Const. Art. 1, § 2; U.S.C.A. Const.Amend. 4.

**14. False Imprisonment** ⇨31

Homeless persons who alleged that city had pattern and practice of arresting homeless persons for harmless conduct such as eating, sleeping or congregating in

public failed to establish that arrests were pretextual in violation of Fourth Amendment and corresponding provision of Florida Constitution; plaintiffs presented no specific evidence regarding any particular arrest, precluding court from finding that any one arrest was objectively unreasonable. West's F.S.A. Const. Art. 1, § 12; U.S.C.A. Const.Amend. 4.

**15. Searches and Seizures** ⇨23

Search or seizure is unreasonable if government's legitimate interests in search or seizure outweigh individual's legitimate expectation of privacy in object of search. West's F.S.A. Const. Art. 1, § 12; U.S.C.A. Const.Amend. 4.

**16. Searches and Seizures** ⇨23

Seizure that is initially lawful may nevertheless violate Fourth Amendment if there is some meaningful interference with individual's possessory interests in that property. West's F.S.A. Const. Art. 1, § 12; U.S.C.A. Const.Amend. 4.

**17. Searches and Seizures** ⇨26

For Fourth Amendment purposes, determining nature of any legitimate expectation of privacy that individuals have in their personal property involves two inquiries: first, whether individual has subjective expectation of privacy in belongings; and second, whether that expectation is one that society is prepared to recognize as reasonable. West's F.S.A. Const. Art. 1, § 12; U.S.C.A. Const.Amend. 4.

**18. Searches and Seizures** ⇨26

For Fourth Amendment purposes, homeless persons had legitimate expectation of privacy in their personal belongings that were seized in public areas. West's F.S.A. Const. Art. 1, § 12; U.S.C.A. Const.Amend. 4.

**19. Searches and Seizures** ⇨26

City's seizures of personal belongings of homeless persons in public areas violated Fourth Amendment. 42 U.S.C.A. § 1983; West's F.S.A. Const. Art. 1, § 12; U.S.C.A. Const.Amend. 4.



**20. Constitutional Law** ⇌82(7)

Once plaintiff shows that government has intruded into fundamental right of privacy, government must show that challenged regulation or act serves compelling state interest through least intrusive means. West's F.S.A. Const. Art. 1, § 23.

**21. Constitutional Law** ⇌82(7)

In determining whether reasonable expectation of privacy exists for purposes of provision of Florida Constitution protecting zone of privacy, court looks to individual's expectation of privacy regardless of whether society recognizes that expectation as reasonable; however, individual's subjective expectations are not dispositive, and in any given case court must consider all circumstances to determine whether individual has legitimate expectation of privacy. West's F.S.A. Const. Art. 1, § 23.

**22. Constitutional Law** ⇌82(7)

Individual does not have constitutionally protected legitimate expectation of privacy in such activities as sleeping and eating in public. West's F.S.A. Const. Art. 1, § 23.

**23. Constitutional Law** ⇌82(7)

City's arrest of homeless persons for activities such as sleeping, eating, standing and congregating in public did not violate privacy rights protected by Florida Constitution. West's F.S.A. Const. Art. 1, § 23.

**24. Constitutional Law** ⇌81, 82(4)

Law may be overbroad, even if it is clear and precise, if it reaches conduct that is constitutionally protected or conduct that is beyond reach of state's police power. West's F.S.A. Const. Art. 1, § 9.

**25. Constitutional Law** ⇌82(6)

**Vagrancy** ⇌1

City ordinances prohibiting sleeping in public, being in public park after hours, obstructing sidewalk, loitering and prowling and trespassing on public property were constitutionally overbroad as applied to homeless persons to extent that they resulted in homeless persons being arrested for harmless, inoffensive conduct that they were forced to perform in public

places. West's F.S.A. Const. Art. 1, § 9; U.S.C.A. Const.Amend. 14.

**26. Constitutional Law** ⇌213.1(1), 215

When government actions discriminate on basis of suspect classification, such as race, alienage or national origin, they are subject to strict scrutiny and will be sustained only if they are suitably tailored to serve compelling state interest; in addition, government classifications that infringe on constitutionally protected rights also require heightened scrutiny. U.S.C.A. Const. Amend. 14.

**27. Constitutional Law** ⇌83(4)

Laws penalize right to travel if they deny person necessity of life, such as free medical care. U.S.C.A. Const.Amend. 14.

**28. Arrest** ⇌63.4(1)

**Constitutional Law** ⇌83(4), 225.1

City's arrests of homeless persons for such harmless acts as sleeping, eating, or lying down in public infringed on their fundamental right to travel, in violation of equal protection clause. U.S.C.A. Const. Amend. 14.

Valerie Jonas, Public Defender's Office, Benjamin Waxman, Weiner, Robbins, Tunkey & Ross, P.A., Miami, FL, for plaintiffs.

Leon M. Firtel, Asst. City Atty., Miami, FL, for defendant.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER ON PLAINTIFFS' REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF**

ATKINS, Senior District Judge.

THIS CAUSE is before the court on the non-jury portion of this bifurcated trial, which focused solely on the issue of liability. The background relevant to the court's findings and conclusions regarding the City's liability can be summarized as follows.

Plaintiffs ("plaintiffs" or "class members") filed this action in December of 1988 on behalf of themselves and approximately 6,000 other homeless people living in the

City of Miami. Plaintiffs' complaint alleges that the City of Miami ("defendant" or "City") has a custom, practice and policy of arresting, harassing and otherwise interfering with homeless people for engaging in basic activities of daily life—including sleeping and eating—in the public places where they are forced to live. Plaintiffs further claim that the City has arrested thousands of homeless people for such life-sustaining conduct under various City of Miami ordinances and Florida Statutes. In addition, plaintiffs assert that the City routinely seizes and destroys their property and has failed to follow its own inventory procedures regarding the seized personal property of homeless arrestees and homeless persons in general.

Plaintiffs allege, pursuant to 42 U.S.C. § 1983,<sup>1</sup> that the property destruction and arrests, which often result in no criminal charges, prosecutions or convictions, violate their rights under the United States and Florida Constitutions. Because the arrested plaintiffs are released without further official process, the argument continues, plaintiffs never have the opportunity to raise such valid defenses as necessity or duress. As discussed below, plaintiffs do not challenge the facial validity of the ordinances or statutes under which they are arrested. Rather, they contend that the City applies these laws to homeless individuals as part of a custom and practice of driving the homeless from public places. Accordingly, plaintiffs do not argue that any of the ordinances should be stricken; instead, they ask that the City be enjoined from arresting homeless individuals for inoffensive conduct, such as sleeping or bathing, that they are forced to perform in public.

Upon careful review the evidence presented at trial and at prior proceedings and after weighing the various arguments presented throughout this litigation, the court

finds that injunctive relief is warranted in this case for the following reasons, which are discussed more fully below. First, plaintiffs have shown that the City has a pattern and practice of arresting homeless people for the purpose of driving them from public areas. *See* section III.B. Second, the City's practice of arresting homeless individuals for harmless, involuntary conduct which they must perform in public is cruel and unusual in violation of the Eighth Amendment to the United States Constitution. *See* section III.C. Third, such arrests violate plaintiffs' due process rights because they reach innocent and inoffensive conduct. *See* section III.G.2. Fourth, the City's failure to follow its own written procedure for handling personal property when seizing or destroying the property of homeless individuals violates plaintiffs' fourth amendment rights. *See* section III.F. Fifth, the City's practice of arresting homeless individuals for performing essential, life-sustaining acts in public when they have absolutely no place to go effectively infringes on their fundamental right to travel in violation of the equal protection clause. *See* section III.H.2.

In essence, this litigation results from an inevitable conflict between the need of homeless individuals to perform essential, life-sustaining acts in public and the responsibility of the government to maintain orderly, aesthetically pleasing public parks and streets. The issues raised in this case reveal various aspects of this conflict which, unfortunately, has become intensified by the overwhelming increase in the number of homeless people in recent years and a corresponding decrease in federal aid to cities. Because some of these issues have arisen in prior proceedings in this case, we briefly outline the history of this litigation before turning to the merits of the present inquiries.

1. Section 1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State, or Territory, or the District of Columbia, subjects, or causes to be subjected, any Citizen of the United States or any other persons within the jurisdiction thereof to the

deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the person injured in an action of law, suit in equity, or other proper proceedings for redress.

42 U.S.C. § 1983.

## I. PROCEDURAL HISTORY

On December 23, 1988, plaintiffs filed this action against the City of Miami on behalf of themselves and thousands of other homeless persons living within the City. The court granted plaintiffs' request for certification of class action on July 21, 1989. As certified, the class consists of involuntarily homeless people living in the "geographic area bordered on the North by Interstate 395, on the South by Flagler Street, on the East by Biscayne Bay, and on the West by Interstate 95." *See* Order Granting Plaintiffs' Motion for Certification of Class Action, dated July 21, 1989, 720 F.Supp. 955.

A. *The Complaint*

Specifically, plaintiffs allege the following in their six-count complaint:

Count I: that the ordinances under which the City arrests class members for engaging in essential, life-sustaining activities—such as sleeping, eating, standing and congregating—are used by the City to punish homeless persons based on their involuntary homeless status in violation of the protection against cruel and unusual punishment found in the Eighth Amendment to the United States Constitution;

Count II: that the City has used its legitimate arrest powers for the unlawful purpose of "pest control," that is, "sanitizing" its streets by removing unsightly homeless individuals, which amounts to malicious abuse of process;

Count III: that the arrests of homeless individuals are pretextual and amount to unreasonable searches and seizures in violation of the Fourth Amendment to the United States Constitution and Article I, Section 12 of the Florida Constitution;

Count IV: that the City's seizures of plaintiffs' property lack probable cause, are unreasonable and violate the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 12 of the Florida Constitution;

Count V: that the City's arrests of homeless individuals for essential, life-sustaining activities violate their right to due process, privacy and decisional autonomy in violation of the Fourteenth Amendment to the United States Constitution and corresponding provisions of the Florida Constitution; and

Count VI: that the right of homeless persons publicly to engage in essential activities such as sleeping, eating, bathing and congregating is "fundamental" for purposes of equal protection under the Fifth and Fourteenth Amendments to the United States Constitution; that arresting the homeless infringes upon these fundamental rights and other fundamental rights, such as the right to travel, and burdens the homeless as a suspect class; and that the City has no compelling interest in making these arrests. *See* Second Amended Complaint for Declaratory, Injunctive and Compensatory Relief/Class Action, filed September 8, 1989.

B. *Prior Proceedings*

During the course of this litigation, plaintiffs have moved for injunctive relief on a number of occasions. On December 23, 1988, plaintiffs asked this court to enjoin the City from conducting systematic police "sweeps" of homeless areas prior to high-profile events such as the Orange Bowl Parade. Plaintiffs alleged that the City conducted the "sweeps" to harass the homeless and to remove them from sight. *See* December 23, 1988 Application for Preliminary Injunction and Incorporated Memorandum of Law. The court denied this motion based on an inability to fashion an injunction with the specificity required by Federal Rule of Civil Procedure 65(d).<sup>2</sup> *See* December 30, 1988 Order on Application for a Preliminary Injunction.

In April 1990, plaintiffs filed their Second Application for Preliminary Injunction after two burning incidents in Lummus Park in which City police officers awakened and handcuffed class members, dumped their personal possessions—includ-

2. Pursuant to Rule 65(d), "[e]very order granting an injunction and every restraining order ... shall be in specific terms [and] shall de-

scribe in reasonable detail ... the acts sought to be restrained." Fed.R.Civ.P. 65(d).

ing personal identification, medicine, clothing and a Bible—into a pile, and set the pile ablaze. Although the City expressed outrage over the incidents and reported that the officers were under investigation,<sup>3</sup> this court found the City's threat of disciplinary action insufficient and ordered it to issue a directive to its police units "not to destroy property collected at the time of contact with homeless persons and to follow their own written policy of preserving property obtained in any manner by their police units." April 26, 1990 Order on Plaintiffs' Second Application for Preliminary Injunction at 4. The court further stated that it would consider finding persons responsible for violating the order in criminal contempt. *Id.*

Despite the strong wording of this order, plaintiffs again sought injunctive relief in March of 1991 as a result of another incident related to the destruction of property as well as the forced removal of the homeless from certain public areas. *See* Motion for Order to Show Cause, Application for Further Injunctive Relief, and Request for Evidentiary Hearing, filed March 5, 1991. As established at the three-day hearing,<sup>4</sup> City police officers awakened homeless persons sleeping under the I-395 overpass and routed them to Lummus and Bicentennial Parks. The officers also distributed a notice advising homeless persons that the park closure hours would be strictly enforced and that unattended property would be confiscated and destroyed. Shortly thereafter, on February 11, 1991, police officers and solid waste workers arrived at Lummus and Bicentennial Parks with front-end loaders and dump trucks. The officers asked homeless persons to take their property and leave immediately. The officers and solid waste workers then removed belongings of both absent and present class members. Two homeless men present on the scene testified that the officers did not give them enough time to

gather their belongings. Another man testified that when he returned from a health clinic to Bicentennial Park and attempted to retrieve his belongings from the City workers, he was threatened with arrest for obstructing justice.

Based on the record, the court found that the City had violated the court's April 26, 1991 order in two ways. *See* March 18, 1991 Order Finding City of Miami in Civil Contempt of Court's April 26, 1990 Order and Providing Further Injunctive Relief ("March 18, 1991 Order"). First, the City violated the court's express prohibition against the destruction of property collected at the time of contact with homeless persons. Second, the City violated its own written policy regarding the preservation of property. Although one of the officers present at the park clean-ups testified that the homeless persons' property looked like "junk to him," the court noted the following:

[P]articularly under these circumstances, value is in the eyes of the beholder, as one man's junk is another man's treasure. Any police officer or city worker assigned to the various areas where homeless persons congregate should be well aware that homeless persons use shopping carts, plastic bags and cardboard boxes as means of transporting their possessions. Any asserted ignorance of this fact insinuates a narrow-minded attitude that this court will not tolerate.

*Id.* at 14. As a result of these violations, the court found the City in civil contempt and as a sanction ordered the City to pay the Camillus House, which provides clothing, food and medical care to homeless persons, the sum of \$2,500. In addition, the court further enjoined the City "from destroying property which it knows or reasonably should know belongs to homeless individuals." *Id.* at 24.<sup>5</sup>

3. At trial, the City presented evidence that the officers were ultimately disciplined. *See* Defendant's Exhibits 2A and 2B.

4. The court held an evidentiary hearing on plaintiffs' motion on March 6, 13, and 14, 1991.

5. The City appealed this order and also filed a Motion Seeking Clarification and Reconsideration of Order Entered March 18. The Eleventh Circuit relinquished jurisdiction on this matter so that this court could rule on the City's motion. In ruling on the City's motion, this court directed the City to deposit the monetary sanc-

On November 22, 1991, the City notified the court of its intent to evacuate and close for renovations two primary outdoor refuges for homeless individuals, Lummus Park and the area under I-395. *See* Notification to Court and Counsel Regarding Certain Projects. In response, on December 4, 1991, plaintiffs asked the court to enjoin the City from executing the projects. The court denied plaintiffs' application for injunctive relief based on the City's assurance that it would offer comparable or better housing to the homeless individuals displaced from the two areas. *See* Order on Plaintiffs' Application for Preliminary Injunction, dated December 13, 1992.<sup>6</sup>

On June 11, 1991, the court granted plaintiffs' motion to bifurcate the trial of this case, with the first portion of the trial focusing solely on the issue of liability to be tried without a jury and, assuming liability was found, the second portion of the trial on damages to be tried before a jury. *See* Order on Motion to Bifurcate. After presiding over the non-jury portion of the trial from June 15 through June 19, 1992, and after reviewing the parties' proposed findings and conclusions and post-trial memoranda, the court makes the following findings of fact and conclusions of law.

## II. FINDINGS OF FACT

### A. *The Homeless Plaintiffs*

The plaintiffs are homeless men, women and children who live in the streets, parks and other public areas in the area of the

tion of \$2,500 in the court registry pending resolution of the appeal from the March 18, 1991 order. *See* January 22, 1992 Order on Defendant's Motion Seeking Clarification and Reconsideration of Order Entered March 18. The court further directed both parties to meet in an effort to resolve their differences regarding the March 18, 1991 order. On June 12, 1992, the parties submitted a report outlining the points on which they could and could not agree. *See* Parties' Report on Defendant's Motion Seeking Clarification of Order Entered March 18, 1991.

6. Additionally, the City filed a motion to dismiss and both parties filed motions for summary judgment. The court denied each of these motions. *See* December 14, 1989 Order Denying Defendant's Motion to Dismiss; September 18,

City of Miami bordered on the North by Interstate 395, on the South by Flagler Street, on the East by Biscayne Bay, and on the West by Interstate 95. In making the factual findings underlying this order, the court relies in large part on the testimony at trial of a number of expert witnesses familiar with the plight of these and other homeless people.

Professor James Wright, an expert in the sociology of the homeless, testified that most homeless individuals are profoundly poor, have high levels of mental or physical disability, and live in social isolation. He further testified that homeless individuals rarely, if ever, choose to be homeless. Generally, people become homeless as the result of a financial crisis or because of a mental or physical illness.

While a mental or physical illness may cause some people to become homeless, health problems are also aggravated by homelessness. Dr. Pedro J. Greer, Jr., Medical Director of the Camillus Health Concern<sup>7</sup> and an expert in medical treatment of homeless individuals, testified that a higher incidence of all diseases exists among the homeless. For example, hypertension, gastro-intestinal disorders, tuberculosis and peripheral vascular disease occur at a much higher rate in homeless people. This is due to a variety of factors such as exposure to the elements, constant walking, sleeping and eating in unsanitary conditions, lack of sleep and poor nutrition. In addition, people without a home general-

1990 Order Adopting Report and Recommendation of the Magistrate and Denying Both Parties' Motions for Summary Judgment.

Most recently, the City notified this court of its intent to evacuate two homeless "settlements" located on Watson Island and in a portion of Bicentennial Park. *See* Defendant City of Miami's Notification of Intent to Take Action, dated November 13, 1992. The City plans to remove all makeshift shelters from these locations and to arrest all homeless persons who refuse to leave. The court will address this matter by separate order after the plaintiffs have had an opportunity to respond to the City's notice.

7. The Camillus House is a privately funded, local homeless shelter run by the Brothers of the Good Shepherd.

ly have no place to store medication, no clock to determine when to take a pill, and no water with which to take it. Medical treatment of the homeless is hampered by the lack of beds and other facilities in the areas where the homeless reside. Lack of transportation further enhances the difficulty of the homeless in obtaining follow-up medical care. Improper diet and the stress of living outside can also aggravate mental illness.

Substance abuse, a component of both physical and mental illness, is also a factor contributing to homelessness. Dr. Greer testified that studies have shown that people are genetically predisposed to alcoholism, but that no such genetic link has been established with regard to drug addictions. Substance abuse also may be a consequence of being homeless. Professor Wright testified that many homeless people do not begin drinking until they become homeless; they use alcohol as a self-medication to numb both psychological and physical pain.

Chronic unemployment is another problem that many homeless face. Joblessness among homeless individuals is exacerbated by certain barriers that impede them from searching for work, such as health problems, the fact that they have no place to bathe, no legal address, no transportation and no telephone.

Professor Wright also testified that the typical day in the life of a homeless individual is predominated by a quest to obtain food and shelter. Because the lines at feeding programs are often long, some homeless individuals skip meals because they will miss obtaining a space in a shelter if they wait for food.

In summary, many of the problems described by the expert witnesses are both a cause and a consequence of homelessness. Furthermore, Dr. David F. Fike, a professor of social work and an expert on homelessness in Dade County, Florida, testified that the longer a person has been on the streets, the more likely it is that he or she will remain homeless.

The City has made laudable attempts, particularly in recent years, to assist the homeless. For example, the City resolved to participate, in conjunction with Dade County, the State of Florida and all agencies providing services to the homeless, in the development of an interim plan to provide resources to the homeless. *See* Miami City Commission Resolution No. 91-544, dated July 11, 1991. In addition, the City stopped enforcing its ordinance against sleeping in public after an Eleventh Circuit ruling called into question the validity of a similar ordinance.<sup>8</sup> However, many factors have frustrated the City's efforts to alleviate the problem of homelessness. Perhaps the most significant factor is the escalating number of homeless people.

The number of homeless individuals in Miami has grown at an alarming rate. According to Dr. Greer, the number of homeless treated medically at the Camillus Health Concern increased dramatically from 1984 to 1991. A disturbing aspect of the rise in homelessness is the increase in the number of families without shelter. One of the more poignant photographs in evidence shows two small children living beneath the I-395 overpass with their pregnant mother. Plaintiffs' Exhibit 26. As Dr. Greer commented, a second generation of homeless persons is being born right under our bridges.

The lack of low-income housing or shelter space cannot be underestimated as a factor contributing to homelessness. At the time of trial, Miami had fewer than 700 beds available in shelters for the homeless. Except for a fortunate few, most homeless individuals have no alternative to living in public areas.

The evidence presented at trial regarding the magnitude of the homelessness problem was overwhelming in itself. Then, shortly after the trial, one of the worst possible scenarios for homelessness occurred when Hurricane Andrew struck South Florida. Overnight, approximately 200,000 people were left without homes.

8. *See Hershey v. City of Clearwater*, 834 F.2d 937, 940 (11th Cir.1987) (finding unconstitutional

portion of ordinance prohibiting sleeping in public).

In sum, this court has no difficulty in finding that the majority of homeless individuals literally have no place to go.

#### B. *Property of the Homeless*

While most of the evidence presented at trial focused on the arrests of the homeless, the evidence presented at earlier proceedings related primarily to the property of homeless individuals. The court incorporates by reference the findings of fact and conclusions of law set forth in the orders dated April 26, 1990, concerning the Lummus park burning incidents, and March 18, 1991, concerning the property sweeps occurring in February of 1991.

The findings of fact concerning the nature of homeless persons' property can be summarized as follows: (1) property belonging to homeless individuals is typically found in areas where they congregate or reside; (2) such property is reasonably identifiable by its nature and organization; it typically includes bedrolls, blankets, clothing, toiletry items, food, identification, and a means for transporting the property such as a plastic bag, cardboard box, suitcase or shopping cart; (3) police officers and city workers assigned to the various areas where homeless persons congregate should be well aware of the appearance of such property; (4) homeless persons often make arrangements for others to watch property in their absence; (5) the homeless often arrange their belongings in such a manner as to suggest ownership—e.g., they may lean it against a tree or other object or cover it with a pillow or blanket; (6) by its appearance, the property belonging to homeless persons is reasonably distinguishable from truly abandoned property; (7) the loss of items such as clothes and medicine affects the health and safety of homeless individuals; (8) the prospect of such losses may discourage the homeless

from leaving parks and other areas to seek work or medical care; and (9) a homeless person's personal property is generally all he owns; therefore, while it may look like "junk" to some people, its value should not be discounted. *See* March 18, 1991 Order.

Although the court has discussed the importance of safeguarding the personal possessions of the homeless in these earlier orders, the seriousness of the loss of such property cannot be overemphasized. Peter Carter, one of the named plaintiffs in this case, testified at trial that after being arrested for sleeping in Bicentennial Park, he returned to the park to find that all of his personal possessions were gone and that it took him three weeks to reassemble his personal papers. This loss affected his ability to obtain work because many prospective employers required identification. As a result, Carter, who now has a job and a place to live, remained on the street just that much longer.

For many of us, the loss of our personal effects may pose a minor inconvenience. However, as Carter's testimony illustrates, the loss can be devastating for the homeless.

#### C. *Arrests of Homeless Individuals*

The City, as evidenced by the records presented at trial, has arrested thousands of homeless individuals from 1987 to 1990 for misdemeanors such as obstructing the sidewalk, loitering, and being in the park after hours.<sup>9</sup> The records show that the City arrested homeless individuals for standing, sleeping or sitting on sidewalks in violation of City of Miami Code § 37-53.1 (prohibiting obstruction of sidewalks);<sup>10</sup> for sleeping on benches, sidewalks or in parks in violation of Miami Code § 37-63 (prohibiting sleeping in public);<sup>11</sup> for sleeping in the park in violation

street or sidewalk after a request by a law enforcement officer to move on so as to cease blocking or obstructing free passage thereon." Miami, Fla., Code § 37-53.1 (1990).

9. The approximately 3,500 arrest records submitted at trial were printed from a database as the result of a computerized search for arrestees who gave as their address Camillus House, a local homeless shelter, or the streets of Miami.

10. Section 37-53.1 prohibits "any person or any number of persons to so stand, loiter or walk upon any street or sidewalk in the city so as to obstruct free passage over, on or along said

11. Section 37-63 provides that "[i]t shall be unlawful for any person to sleep on any of the streets, sidewalks, public places or upon the private property of another without the consent

of Miami Code § 38-3 (prohibiting being in the park after hours);<sup>12</sup> for loitering and prowling in violation of Florida Statutes § 856.021 and Miami Code §§ 37-34<sup>13</sup> and 35;<sup>14</sup> and for sleeping, sitting or standing in public buildings in violation of Florida Statutes § 810.08, .09 (prohibiting trespassing).

As discussed below in greater detail, the arrest records also show that many of the arrests for being in the park after hours were made less than an hour before the park was to reopen. In addition, the narrative sections of a majority of the arrest reports indicate that the individual arrestee was not disorderly, was not involved in any drug activity, and did not pose any apparent harm to anyone. Many of the records indicate that the arrestee was doing nothing more than sleeping. Peter Carter testified that he was doing just that when he was arrested in Bicentennial Park in 1988.

Carter stated that, during the time that he was homeless, he would sleep in Bicentennial Park or near Camillus House. He preferred the park because it had a restroom and running water. While in the park, he would stay with a group of fifteen to thirty other homeless people because it was safer to do so. Carter testified that, at around midnight on the night of his arrest, police officers arrived in cars and a paddy wagon. The officers told Carter and approximately fifteen others not to move, paired them, strapped their hands, put them into the paddy wagon and took them

of the owner thereof." Miami, Fla., Code § 37-63 (1990).

12. Section 38-3 provides that public parks shall be closed to the general public from 10:00 p.m. to 7:00 a.m. Miami, Fla., Code § 38-3 (1990).

13. Section 37-34 prohibits "any person to loiter or prowl in a place, at a time or in a manner not usual for law abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity." Miami, Fla., Code § 37-34(D) (1990). The section also defines circumstances justifying alarm and immediate concern for safety as

those circumstances where peace and order are threatened or where the safety of persons or property jeopardized. The police officer

to the station. After taking statements in a room at the station, the officers took Carter and the others to jail and detained them another hour while they checked for any outstanding warrants. The officers released Carter and the other homeless individuals at approximately 4:00 a.m. Carter then walked back to Bicentennial Park with eight to ten other people and found that all of their belongings were gone. According to Carter, he and his companions were not bothering anyone while they were in the park; at the time of the arrest, he and the others were doing nothing more than sleeping.

The testimony and the documentary evidence regarding the arrests of the homeless—in addition to the sheer volume of homeless people in the City of Miami and the dearth of shelter space—support plaintiffs' claim that there is no public place where they can perform basic, essential acts such as sleeping without the possibility of being arrested.

### III. CONCLUSIONS OF LAW<sup>15</sup>

#### A. Jurisdiction

Plaintiffs brought this action under the United States Constitution, Amendments I, IV, V, VI, VIII, IX, and XIV; the Florida Constitution, Article I, Sections 2, 5, 9, 12, 16, 17 and 23; and 42 U.S.C. §§ 1983 and 1988. The Court has jurisdiction based on 28 U.S.C. §§ 1331 and 1343.

must be able to point to specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant a finding that a breach of the peace is imminent or the safety of persons or property is threatened.

*Id.*

14. Section 37-35 provides in pertinent part that "A person commits the offense of loitering when he knowingly: (1) Loiters on any public street, public sidewalk, public overpass, public bridge or public place so as to obstruct the passage of pedestrians and vehicles." Miami, Fla., Code § 37-35 (1990).

15. To the extent that any findings of fact constitute conclusions of law, they are adopted as such; to the extent that any conclusions of law constitute findings of fact, they are so adopted.



As noted above, the City has displayed greater sensitivity toward the homeless and has made some attempts to address the problems of homelessness, particularly in recent years. However, the City's voluntary cessation of any of the allegedly illegal conduct does not deprive this court of the power to decide this case. *See United States v. W.T. Grant Co.*, 345 U.S. 629, 632-33, 73 S.Ct. 894, 897-98, 97 L.Ed. 1303 (1953) (citations omitted). Because the plaintiffs have a reasonable expectation that the City will resume the alleged illegal treatment of the homeless that it might have ceased, and because the public has an interest in having the legality of the City's practices settled, the court is obliged to address the very difficult issues the parties have raised. *See id.* at 632, 73 S.Ct. at 897. This is so particularly where the problem of homelessness is more pervasive than ever.

#### B. Municipal Liability

[1-3] The City contends that plaintiffs have failed to establish municipal liability. Accordingly, the threshold question is whether the City may be held liable for the alleged acts. A local government may be liable under 42 U.S.C. § 1983 when "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." *Monell v. New York City Dept. of Soc. Svcs.*, 436 U.S. 658, 694, 98 S.Ct. 2018, 2037-38, 56 L.Ed.2d 611 (1978). To establish such a policy or custom, plaintiffs must show a persistent and widespread practice; random acts and isolated incidents are insufficient. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127, 108 S.Ct. 915, 926, 99 L.Ed.2d 107 (1988); *DePew v. City of St. Marys*, 787 F.2d 1496, 1499 (11th Cir.1986). A city's continued failure to prevent improper police conduct when it has knowledge of that conduct is "precisely the type of informal policy or custom that is actionable under section 1983." *Id.* at 1499.

[4] In the present case, plaintiffs have shown that the alleged arrests and unrea-

sonable seizures of their property were not random, isolated acts. Plaintiffs presented records of the arrests of approximately 3,500 homeless individuals. As discussed in more detail below, *see* section III.D, the time of day of many of these arrests alone suggests a custom or policy by the City's police department. In addition, plaintiffs presented police department internal memoranda dated from 1986 to 1991 regarding various aspects of the arrests of the homeless. *See* Plaintiffs Exhibits 2-7. Almost all of the memoranda are directed to high-ranking police department officials or indicate some direction from other City officials. *See* section III.D (discussing internal memoranda showing, *inter alia*: City policy of driving homeless from public areas; active search for ordinances to replace anti-sleeping ordinance and to enforce against homeless who were not observed violating any laws; elimination of food distribution as strategy to disperse homeless). Plaintiffs also presented evidence of local newspaper articles about the arrests of the homeless. *See* Plaintiffs' Exhibit 8. Based on the evidence presented, this court has no difficulty in determining that policy-makers within the police department and within the City knew or should have known of the alleged arrests and violations of plaintiffs' property rights and that the City failed to take any steps to stop such conduct. Accordingly, municipal liability exists.

#### C. Cruel and Unusual Punishment

[5] Plaintiffs contend that the City's arrests of class members under various ordinances prohibit them from lying down, sleeping, standing, sitting or performing other essential, life-sustaining activities in any public place at any time. Plaintiffs argue that their status of being homeless is involuntary and beyond their immediate ability to alter and that the conduct for which they are arrested is inseparable from their involuntary homeless status. Consequently, plaintiffs argue, application of these ordinances to them is cruel and unusual in violation of the eighth amend-

ment.<sup>16</sup>

The judicial prohibition of status-based abuse of police power under the eighth amendment is not without precedent. In a leading United States Supreme Court case addressing the issue, the Court held that punishment of a person for his involuntary status of being an addict was cruel and unusual in violation of the eighth amendment. *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). Finding the status of being an addict similar to that of being mentally or physically ill, both of which are innocent and involuntary, the Court stated the following:

a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

*Id.* at 666, 82 S.Ct. at 1420. The Court distinguished the punishment of the involuntary status of being an addict and the punishment of voluntary acts such as the use, purchase, sale or possession of narcotics or the disorderly behavior resulting from their use. *See id.*

Based on *Robinson*, courts have overturned vagrancy laws because they punish status or condition. In *Wheeler v. Goodman*, a district court found a vagrancy law to be constitutionally invalid because it punished mere status. 306 F.Supp. 58, 64 (W.D.N.C.1969), *vacated on other grounds*, 401 U.S. 987, 91 S.Ct. 1219, 28 L.Ed.2d 524 (1971).<sup>17</sup> Similarly, in *Headley v. Selkowitz*, 171 So.2d 368 (Fla.1965), the Florida Supreme Court stated that a vagrancy statute, even if facially valid, should not be applied to "innocent victims of misfortune" who appear to be vagrants, but "who are not such either by choice or intentional conduct." *Id.* at 370; *see also*

*Goldman v. Knecht*, 295 F.Supp. 897, 907-08 (D.Colo.1969) (finding vagrancy statute that punished status unconstitutional in violation of fourteenth amendment's substantive due process limitation); *Parker v. Municipal Judge*, 83 Nev. 214, 427 P.2d 642, 644 (1967) ("It is simply not a crime to be unemployed, without funds, and in a public place. To punish the unfortunate for this circumstance debases society."); *Hayes v. Municipal Court*, 487 P.2d 974, 981 (Okla.Crim.App.1971) (quoting *Parker* with approval); *Alegata v. Commonwealth*, 353 Mass. 287, 231 N.E.2d 201, 207 (1967) ("Idleness and poverty should not be treated as a criminal offense."). Again, voluntariness of the status or condition is the decisive factor.

The Supreme Court again applied the *Robinson* principle in *Powell v. Texas*, 392 U.S. 514, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (1968). Justice Marshall, writing for a plurality of four Justices, found that the appellant was convicted not for his status as a chronic alcoholic, but for

being in public while drunk on a particular occasion. The State of Texas thus has not sought to punish a mere status, as California did in *Robinson*; nor has it attempted to regulate appellant's behavior in the privacy of his own home. Rather, it has imposed upon appellant a criminal sanction for public behavior which may create substantial health and safety hazards, both for appellant and for members of the public, and which offends the moral and esthetic sensibilities of a large segment of the community. This seems a far cry from convicting one from being an addict, being a chronic alcoholic, being "mentally ill, or a leper."

*Id.* at 532, 88 S.Ct. at 2154 (quoting *Robinson*, 370 U.S. at 666, 82 S.Ct. at 1420-21).

16. The eighth amendment provides as follows: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The prohibitions of the eighth amendment apply to the states through the due process clause of the fourteenth amendment. *See Robinson v. California*, 370 U.S. 660, 666, 82 S.Ct. 1417, 1420, 8 L.Ed.2d 758 (1962).

17. Unlike the plaintiffs in the present case, the plaintiffs in *Wheeler* were arrested in their own home. Nevertheless, the idea that "[i]dleness and poverty should not be treated as a criminal offense" should be no less applicable to those who have no home. 306 F.Supp. at 63 (citing *Robinson v. State of California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962)).

Although the law is well-established that a person may not be punished for involuntary status, it is less settled whether involuntary conduct that is inextricably related to that status may be punished. An initial reading of *Powell* suggests that all conduct is outside the rule of *Robinson*. The plurality in *Powell* stated that

[t]he entire thrust of *Robinson*'s interpretation of the Cruel and Unusual Punishment Clause is that criminal penalties may be inflicted only if the accused has committed some act, has engaged in some behavior, which society has an interest in preventing, or perhaps in historical common law terms has committed some *actus reus*. It thus does not deal with the question of whether certain conduct cannot constitutionally be punished because it is, in some sense, "involuntary" or occasioned by compulsion.

*Powell*, 392 U.S. at 533, 88 S.Ct. at 2154-55.

However, the *Powell* plurality was not confronted with a critical distinguishing factor that is unique to the plight of the homeless plaintiffs in this case: that they have no realistic choice but to live in public places. Justice White identified this distinction in his concurrence:

The fact remains that some chronic alcoholics must drink and hence must drink *somewhere*. Although many chronics have homes, many others do not. For all practical purposes the public streets may become home for these unfortunates, not because their disease compels them to be there, but because, drunk or sober, they have no place else to go and no place else to be when they are drinking.... For some of these alcoholics I would think a showing could be made that resisting drunkenness is impossible and that avoiding public places when intoxicated is also impossible. As applied to them this statute is in effect a law which bans a single act for which they may not be convicted

under the Eighth Amendment—the act of getting drunk.

*Id.* at 551, 88 S.Ct. at 2163-64 (White, J., concurring) (emphasis in original). Although Justice White joined the majority in rejecting the appellant's challenge to his conviction, he did so only because he found the record insufficient to support the appellant's claim that his alcoholic condition compelled him to appear in public while drunk. *Id.* at 549-50, 88 S.Ct. at 2162-63. In contrast, as discussed below, the record in the present case amply supports plaintiffs' claim that their homeless condition compels them to perform certain life-sustaining activities in public.

As a number of expert witnesses testified, people rarely choose to be homeless. Rather, homelessness is due to various economic, physical or psychological factors that are beyond the homeless individual's control.

Professor Wright testified that one common characteristic of homeless individuals is that they are socially isolated; they are part of no community and have no family or friends who can take them in. Professor Wright also testified that homelessness is both a consequence and a cause of physical or mental illness. Many people become homeless after losing their jobs, and ultimately their homes, as a result of an illness. Many have no home of their own in the first place, but end up on the street after their families or friends are unable to care for or shelter them. Dr. Greer testified that once a person is on the street, illnesses can worsen or occur more frequently due to a variety of factors such as the difficulty or impossibility of obtaining adequate health care, exposure to the elements, insect and rodent bites, and the absence of sanitary facilities for sleeping, bathing or cooking.<sup>18</sup> Both Professor Wright and Dr. Greer testified that, except in rare cases, people do not choose to live under these conditions.

18. The photographs admitted during Dr. Greer's testimony depicting various locations where homeless people sleep and congregate show the filth, the exposure, and the lack of adequate facilities. For example, the photographs show that many of the homeless individuals sleep in

the dirt on top of pieces of cardboard. A number of the photographs showed that plastic bottles were a common possession of homeless individuals. Dr. Greer testified that, without a fresh water supply, many homeless persons store water in plastic jugs when they can get it.

According to Professor Wright's testimony, joblessness, like physical and mental illness, becomes more of a problem once a person becomes homeless. This is so because of the barriers homeless individuals face in searching for a job. For example, they have no legal address or telephone. Also, they must spend an inordinate amount of time waiting in line or searching for seemingly basic things like food, a space in a shelter bed or a place to bathe.

In addition to the problems of social isolation, illness and unemployment, homelessness is exacerbated by the unavailability of many forms of government assistance. Gail Lucy, an expert in the area of government benefits available to homeless people, testified that many homeless individuals are ineligible for most government assistance programs. For example, Supplemental Security Income is available only to people who are sixty-five years of age or more, who are blind or disabled and who are without other resources. Social Security Disability Insurance is available only to workers who have paid into the social security fund for five of the past ten years prior to the onset of the disability. Aid to Families with Dependent Children is available only to low-income families with physical custody of children under the age of eighteen. The only benefit that is widely available to the homeless is food stamps.

Another notable form of assistance that is unavailable to a substantial number of homeless individuals is shelter space. Lucy testified that there are approximately 700 beds available in local shelters. However, approximately 200 of these are "program beds," for which one must qualify. In addition, some of these beds are set aside for families. Given the estimated 6,000 individuals who were homeless at the time of trial and the untold number of people left homeless by Hurricane Andrew, the lack of adequate housing alternatives cannot be overstated. The plaintiffs truly have no place to go.

In sum, class members rarely choose to be homeless. They become homeless due to a variety of factors that are beyond their control. In addition, plaintiffs do not have

the choice, much less the luxury, of being in the privacy of their own homes. Because of the unavailability of low-income housing or alternative shelter, plaintiffs have no choice but to conduct involuntary, life-sustaining activities in public places. The harmless conduct for which they are arrested is inseparable from their involuntary condition of being homeless. Consequently, arresting homeless people for harmless acts they are forced to perform in public effectively punishes them for being homeless. This effect is no different from the vagrancy ordinances which courts struck because they punished "innocent victims of misfortune" and made a crime of being "unemployed, without funds, and in a public place." See *Headley v. Selkowitz*, 171 So.2d 368, 370 (Fla.1965); *Parker v. Municipal Judge*, 83 Nev. 214, 427 P.2d 642, 644 (1967). Therefore, just as application of the vagrancy ordinances to the displaced poor constitutes cruel and unusual punishment, see, e.g., *Wheeler v. Goodman*, 306 F.Supp. 58 (W.D.N.C.1969), *vacated on other grounds*, 401 U.S. 987, 91 S.Ct. 1219, 28 L.Ed.2d 524 (1971); *Headley v. Selkowitz*, 171 So.2d 368 (Fla.1965), arresting the homeless for harmless, involuntary, life-sustaining acts such as sleeping, sitting or eating in public is cruel and unusual.

The City suggests, apparently in reference to the aftermath of Hurricane Andrew, that even if homelessness is an involuntary condition in that most persons would not consciously choose to live on the streets, "it is not involuntary in the sense of a situation over which the individual has absolutely no control such as a natural disaster which results in the destruction of one's place of residence so as to render that person homeless." City's Post-Trial Proposed Findings of Fact & Conclusions of Law at 7. The court cannot accept this distinction. An individual who loses his home as a result of economic hard times or physical or mental illness exercises no more control over these events than he would over a natural disaster. Furthermore, as was established at trial, the City does not have enough shelter to house Mia-

mi's homeless residents.<sup>19</sup> Consequently, the City cannot argue persuasively that the homeless have made a deliberate choice to live in public places or that their decision to sleep in the park as opposed to some other exposed place is a volitional act. As Professor Wright testified, the lack of reasonable alternatives should not be mistaken for choice.

For plaintiffs, resisting the need to eat, sleep or engage in other life-sustaining activities is impossible. Avoiding public places when engaging in this otherwise innocent conduct is also impossible. Moreover, plaintiffs have not argued that the City should not be able to arrest them for public drunkenness or any type of conduct that might be harmful to themselves or to others. To paraphrase Justice White, plaintiffs have no place else to go and no place else to be. *Powell*, 392 U.S. at 551, 88 S.Ct. at 2163-64. This is so particularly at night when the public parks are closed. As long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something for which they may not be convicted under the eighth amendment—sleeping, eating and other innocent conduct. Accordingly, the court finds that defendant's conduct violates the eighth amendment ban

against cruel and unusual punishment and therefore that the defendant is liable on this count.

#### D. Malicious Abuse of Process

In their claim for malicious abuse of process, plaintiffs contend that the City, through its police department, has used its legitimate arrest process for the unlawful purpose of harassing and intimidating homeless individuals to purge them from streets and parks.<sup>20</sup>

[6-9] An action for abuse of process lies if prosecution is initiated legitimately but is thereafter used for a purpose other than that intended by the law.<sup>21</sup> See, e.g., *Miami Herald Publishing Co. v. Ferre*, 636 F.Supp. 970, 974 (S.D.Fla.1985); *Dunn v. Koehring Co.*, 546 F.2d 1193, 1199 (5th Cir.1977); *Jennings v. Shuman*, 567 F.2d 1213, 1217 (3d Cir.1977); Restatement (Second) of Torts § 682. Unlike malicious prosecution, the tort of abuse of process does not involve bringing an action without justification; rather, abuse of process is a misuse of "a process justified in itself for an end other than that which it was designed to accomplish." W. Prosser, *Handbook of the Law of Torts* 856 (4th ed. 1971); see also *Jennings*, 567 F.2d at 1218-19 (discussing differences between malicious use and malicious abuse of process).<sup>22</sup>

which a court has held that the arrest process may not serve as the basis of an abuse of process claim.

22. In *Jennings*, the court explained the difference between malicious prosecution and malicious abuse of process as follows:

We begin by distinguishing the justification given for issuance of process from the use to which process is put. The justification may be either legitimate or illegitimate. If it is illegitimate, there is malicious use. Likewise the use to which process is put can be either legitimate or illegitimate, and, if illegitimate, there is malicious abuse. For example, if the defendant justifies issuance of process by untruthfully saying that the plaintiff solicited burglary and uses the process only to have him jailed, this is malicious use only. It is not malicious abuse because jailing is the purpose for which criminal process was intended. If the defendant has process issued based on the truthful statement that the plaintiff solicited burglary and then uses the threat of prosecution for purposes of extortion, this is malicious abuse only.

19. The City contends there is no legal basis for demanding that it provide low-cost housing for all of the county's homeless. The lack of sufficient shelter, of course, is not the City's problem alone. However, plaintiffs are not asking the City to shoulder the entire burden of solving the homeless problem. They ask only that the City not arrest them for performing harmless acts in public areas when they have no place else to go.

20. Additionally, plaintiffs urge this court to find that the City acted with malice. The court has found isolated instances that have occurred during this litigation, such as the Lummus Park burning incidents, to be "innately offensive and repulsive." See April 26, 1990 Order on Plaintiffs' Second Application for Preliminary Injunction. However, contrary to plaintiffs' contention, the evidence does not show that the City's objective of removing the homeless, however insensitive or improperly executed, was undertaken maliciously.

21. The City contends that a claim for abuse of process requires some official judicial process. However, this court is unaware of any case in

While a plaintiff must prove lack of probable cause in a malicious prosecution action, proof of this element is not required to establish malicious abuse of process. Prosser at 856; *Jennings*, 567 F.2d at 1218. No abuse of process exists when the process is used to accomplish the result for which it is created, regardless of an incidental motive of spite or ulterior purpose. *See Ferre*, 636 F.Supp. at 975 (abuse of process arises only when there has been perversion of court process to accomplish end which process was not intended by law to accomplish, or which compels party to do some collateral thing he could not legally be compelled to do) (citation omitted); *Bothmann v. Harrington*, 458 So.2d 1163, 1169 (Fla. 3d DCA1984) (no abuse of process when process is used to accomplish result for which it was created, despite incidental or concurrent ulterior motive) (citing Restatement (Second) of Torts § 682 comment b; Prosser at § 121). Applying these principles to the facts of this case, we now consider whether plaintiffs have established a claim for abuse of process.

After weighing the evidence presented at trial and at other stages of this litigation and after reviewing the numerous arrest records, *see* Plaintiffs' Exhibits 1A-1AAA, the court finds that plaintiffs have shown that the City has used the arrest process for the ulterior purpose of driving the homeless from public areas. The City's arrest sweeps in Lummus and Bicentennial Parks in February and March of 1990,<sup>23</sup> and the harassment of homeless residents in the City's "clean up" of those parks in February and March of 1991,<sup>24</sup> are two prominent examples. The existence of a strategy to disperse the homeless is also supported by the arrest records and internal memoranda that were admitted into evidence at trial. *See* Plaintiffs' Exhibits 1-7.

<sup>23</sup> 567 F.2d at 1218-19.

<sup>23</sup> *See* April 26, 1990 Order on Plaintiffs' Second Application for Preliminary Injunction.

<sup>24</sup> *See* Order Finding City in Civil Contempt of Court's April 26, 1990 Order and Providing Further Injunctive Relief; Transcript of March 13, 1991 Hearing.

### 1. Arrest Records

The arrest records show that a number of homeless individuals have been arrested for being in the park after hours just minutes before the park was to reopen. *See* Plaintiffs' Exhibits 1A-1AAA. In addition, a majority of the arrest records indicate that the homeless arrestee was not drunk or disorderly, was not in possession of any drugs, and generally posed no harm to himself or to anyone else; in fact, many of the officers reported that the arrestee was sound asleep and had to be awakened, that the person had no reason to be in the park except to sleep or that he or she had no place to go. The records also show that once the validity of the ordinance against sleeping in public was called into question,<sup>25</sup> the City resorted to other ordinances to remove homeless individuals from public areas. *Compare* Plaintiffs' Exhibits 1A-1AA (Arrest Records from 1987 through January, 1988) *with* Exhibits 1AA-1AAA (Arrest Records from February, 1988 through March, 1990) (showing significant increase in arrests under park closure, trespass and loitering ordinances after arrests under sleeping in public ordinance ceased). Indeed, some of the internal memoranda also indicate that the police department was actively looking for ordinances to replace the law against sleeping in public in order to continue arrest sweeps near Camillus House, where homeless often line up for food or shelter. *See, e.g.,* Plaintiffs' Exhibits 4G, 4J, 4K. *See also* Plaintiffs' Exhibit 3K (December 1, 1987 memorandum from police sergeant to assistant chief regarding homeless congregating near homeless shelter: "The current problem is the quick release by the Dade County Correction System resulting in the almost immediate return of derelicts back to the area. Another problem is the lack of proper legislative laws dealing with vagrants.").

<sup>25</sup> On December 27, 1987, the Eleventh Circuit found unconstitutional part of a Clearwater ordinance against sleeping in public. *Hershey v. City of Clearwater*, 834 F.2d 937, 940 (11th Cir. 1987).

In sum, the timing of the arrests, the shift to ordinances other than the anti-sleeping law, and the memoranda indicating an active search for new ordinances and suggesting a desire to eliminate the homeless presence, all support plaintiffs' contention that, at least in the past, the arrests were made for an ulterior purpose.<sup>26</sup>

## 2. Internal Memoranda

Like the arrest records, various internal memoranda from the police department suggest that the City's primary purpose was to keep the homeless moving in order to "sanitize" the parks and streets. *See generally* Plaintiffs' Exhibits 2A-7C. For example, a park development program proposed in April of 1986 listed "vagrant control" as an item including goals of removing "undesirables" from the park and discouraging their return. *See* Plaintiffs' Exhibit 2B.

References to goals or strategies of eliminating or eradicating the presence of homeless or of getting the homeless to move out of certain locations appear throughout the memoranda. *See, e.g.,* Plaintiffs' Exhibit 7C (February 7, 1991 memo from deputy police chief to chief of police reporting that city manager instructed police department to enforce all applicable violations in city parks to "address the homeless problems"). In an April 26, 1990 memorandum dealing with citizens' complaints about homeless people begging in a certain area, the chief of police advised the city manager as follows: "There are numerous homeless people wandering around this area *that are not violating any laws*. As you know, we must see a violation of law by these people before our officers can make an arrest on a misdemeanor charge." Plaintiffs' Exhibit 6G (emphasis added). In addition, the memorandum advised that a permanent watch order would be placed on the area, that "Directed Patrol Units" would be assigned to the area to enforce all violations of law, and that merchants would be encouraged to call the police when they observed a violation. *Id.* Here, the sug-

gestion of an active search for any reason to arrest the homeless individuals in the targeted area, particularly in light of the acknowledgment that they were not violating any laws, supports plaintiffs' position that the City had a practice of arresting homeless individuals under various ordinances for the purpose of removing them from public areas.

As some of the memoranda reveal, one particularly troubling strategy was to eliminate food sources that attracted homeless people. For example, in a December 5, 1987 memorandum to an assistant police chief, a patrol supervisor responding to a citizen complaint about "derelicts" frequenting his property identified the problem as follows: "The Camilus [sic] House by giving free food at certain times during the day, causes the poor and needy to 'camp out' [in the area] awaiting their expected nourishment." Plaintiffs' Exhibit 3L. The supervisor reported that, to solve the problem, he had assigned a unit to "arrest and/or force an extraction of the undesirables from the area," and that the arrests "produced immediate positive results." *Id.* The patrol supervisor further explained that the

reason for the results is that because of the arrest, they are taken from the immediate area where the food is located. They are placed in the east wing of the jail where food is not served. Consequently they do not get fed. What has occurred is that the vagrants now await food in hidden areas around the Camilus House.

*Id.* It is unclear whether the citizen ever benefitted from these "positive results," as the officer was unable to contact him. *See also* Plaintiffs' Exhibit 6A (January 11, 1990 memo from patrol commander to police chief regarding, *inter alia*, relocation of feeding line, lack of existing law governing dispensing of food by church groups and possible use of anti-litter ordinance to arrest homeless in feeding lines).

diminish the conduct of those police officers who have treated the homeless in a compassionate and humane way.

<sup>26</sup> Although the evidence shows the existence of the City's ulterior purpose for arresting the homeless, nothing in this order is intended to

The testimony of Stuart Savedoff and Judy Phillips also suggests that the City had a strategy of eliminating food sources. Savedoff and Phillips, both participants in a feeding program for the homeless, testified that in December of 1989, police officers ordered them to stop their program and to leave the City property just as they were about to finish serving meals to several hundred homeless individuals. Savedoff testified that he asked the officer in charge if he and the other volunteers could have fifteen more minutes to serve the hundred people who remained in the feeding line. The officer refused, stating that the program was disturbing the peace. However, according to both Savedoff and Phillips, there was no one else in the area but the program volunteers and the homeless; no one was disturbing the peace or obstructing the sidewalk. Savedoff testified that the officer threatened to arrest him if he did not leave. Phillips testified that she complained about the incident to assistant city manager Herbert Bailey, who explained that the City did not want unsightly homeless people in the developing downtown area.

Finally, the testimony of various witnesses at trial substantiates plaintiffs' allegations that the arrests were made for a purpose not intended by the various ordinances. For example, Brother Paul Johnson, former Executive Director of Camillus House testified that he was regularly awakened between 4:00 and 5:00 in the morning by police who passed by the shelter and used their loudspeakers to order people sleeping outside the shelter to move along. In reference to plaintiffs' pretextual arrest claim but equally applicable here, Lou Reiter, plaintiffs' expert witness in police practices and procedures, testified that a reasonable officer would not have arrested homeless individuals for engaging in harmless conduct such as sleeping, sitting or congregating in a public area absent the City's invalid purpose of intimidating and harassing the homeless in order to dissipate them.

In summary, the arrest records, the internal police memoranda and the testimony presented at trial support plaintiffs' claim

that the City used the arrest process for the ulterior purpose of harassing and dissipating the homeless.

[10,11] However, as reprehensible as arresting homeless individuals for this purpose may be, a defendant's ulterior purpose alone is an insufficient basis for an abuse of process claim:

Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.

Prosser at 857 (footnotes omitted). In other words, abuse of process cases generally involve some form of extortion. *Bothmann v. Harrington*, 458 So.2d 1163, 1169 (Fla. 3d DCA1984). In addition, as one court from this district has made clear, the act constituting the misuse must occur *after* the process is issued. *Ferre*, 636 F.Supp. at 974.

In *Ferre*, the defendant counterclaimed that plaintiffs filed the lawsuit against him in order to drive him from office. The court determined that the defendant failed to state a claim for abuse of process because there was no "*post*-issuance of process abuse." *Id.* at 975. Similarly, in *Jennings*, the court found that the defendants' abuse of process occurred with the act, *after* process had been issued, of threatening the plaintiff with extortion. 567 F.2d at 1219; *see also Dunn v. Koehring*, 546 F.2d 1193, 1199 (5th Cir.1977) (defendant brought criminal proceedings against plaintiff and *thereafter* attempted to extort funds).

Here, although plaintiffs have marshalled substantial evidence to demonstrate that they were arrested for a purpose other than that intended by the law, they have not shown that the City performed any act beyond carrying the arrest process to its authorized conclusion. The challenged arrests were authorized by the ordinances under which they were made. As in *Ferre*, even though the arrest process may have



been initiated with the worst intentions and for the ulterior purpose of driving plaintiffs from public streets and parks, such conduct is not actionable under this claim without proof of some "post-issuance" act. Here, plaintiffs have not shown that the City committed any definite act constituting the alleged misuse that occurred after the issuance of process. Therefore, plaintiffs' malicious abuse of process claim must fail.

#### E. Unreasonable Search and Seizure

Plaintiffs next contend that the City's arrests of homeless persons are pretextual in violation of the Fourth Amendment to the United States Constitution<sup>27</sup> and the corresponding provision of the Florida Constitution.<sup>28</sup>

[12,13] The proper inquiry for determining whether or not a seizure is pretextual is not whether the officer *could* validly have made the seizure, but whether under the same circumstances a reasonable officer *would* have made the seizure in the absence of the invalid purpose. *United States v. Smith*, 799 F.2d 704, 709 (11th Cir.1986); *see also United States v. Wilson*, 853 F.2d 869, 871 (11th Cir.1988), *cert. denied*, 488 U.S. 1041, 109 S.Ct. 866, 102 L.Ed.2d 990 (1989); *United States v. Bates*, 840 F.2d 858, 860 (11th Cir.1988) (citing *Smith*, 799 F.2d at 708-09). However, an objectively reasonable seizure is not invalid just because an officer acts out of improper motivation. *Smith*, 799 F.2d at 708-09. Rather, determination of whether a fourth amendment violation has occurred requires an "objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time," and not on the officer's actual state of mind at the time of the challenged action taken." *Id.* at 709 (quoting *Maryland v. Macon*,

472 U.S. 463, 470-71, 105 S.Ct. 2778, 2782-83, 86 L.Ed.2d 370 (1985)).

[14] As stated, plaintiffs allege that the City has a pattern and practice of arresting homeless individuals for harmless conduct such as eating, sleeping or congregating in public when they have no place else to go. In support of their pretextual arrest claim, plaintiffs rely on the same evidence discussed in the previous section to show the City's improper purpose. They contend that, under the *Smith* analysis, no reasonable officer would have made these arrests absent the impermissible purpose of dissipating the homeless.

Unlike the courts in *Smith*, *Wilson*, and *Bates*, this court does not have before it the details surrounding the numerous challenged arrests. *Smith*, *Wilson* and *Bates* involved a single arrest with detailed evidence regarding the arresting officer's actions and the circumstances that existed at the time of the arrest. While plaintiffs have presented voluminous documentary evidence to support their contention that, in general, the City had an improper motive in arresting homeless people, plaintiffs have presented no specific evidence regarding any particular arrest. This court cannot determine whether a fourth amendment pretextual violation has occurred without being able to examine more detailed evidence related to "the facts and circumstances confronting [the arresting officer] at the time [of the arrest]." *Smith*, 799 F.2d at 709 (quoting *Maryland v. Macon*, 472 U.S. 463, 470-71, 105 S.Ct. 2778, 2782-83, 86 L.Ed.2d 370 (1985)). Accordingly, the court cannot find that any one of the arrests was objectively unreasonable in violation of the fourth amendment and therefore plaintiffs' pretextual arrest claim must fail.

27. The fourth amendment states as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

28. Article I, section 12 of the Florida Constitution provides that the "right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures ... shall not be violated." *See Fla. Const. art. 1, § 12.*

F. *Unlawful Seizure and Taking of Property*

Plaintiffs allege that the City has a pattern and practice of seizing and destroying their personal property or forcing them to abandon it at arrest sites in violation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution. In addition, plaintiffs contend that the City routinely fails to follow its own inventory procedures with respect to the personal property of homeless people. In response, the City argues that plaintiffs have failed to establish that it has such a policy considering the City's written procedure regarding personal property that has been found or seized.<sup>29</sup> The City further argues that any interest plaintiffs have in their property is far outweighed by the government's interest in keeping public areas sanitary, in not being burdened by the logistics of handling property belonging to the homeless and in not having incrimina-

ting evidence that might be found subject to challenge. After carefully weighing the arguments of both parties in light of the relevant law, the court finds that plaintiffs' property rights are protected by the fourth amendment and that the City is liable on this count.<sup>30</sup>

[15, 16] The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. A search or seizure is unreasonable if the government's legitimate interests in the search or seizure outweigh the individual's legitimate expectation of privacy in the object of the search. See *Maryland v. Buie*, 494 U.S. 325, 331, 110 S.Ct. 1093, 1096, 108 L.Ed.2d 276 (1990); *Colorado v. Bertine*, 479 U.S. 367, 372, 107 S.Ct. 738, 741, 93 L.Ed.2d 739 (1987). In addition, a seizure that is initially lawful may nevertheless violate the fourth amendment if "there is some meaningful interference with an individual's pos-

29. The City claims that the acts that gave rise to this Court's orders dated April 26, 1990 and March 18, 1991 were aberrations or random conduct, which do not amount to a pattern or practice of violating plaintiffs' property rights. See *City of St. Louis v. Praprotnik*, 485 U.S. 112, 108 S.Ct. 915, 99 L.Ed.2d 107 (1988). However, as discussed herein, plaintiffs presented substantial evidence at trial showing that the City has a pattern and practice of arresting homeless individuals for the purpose of dissipating them. The evidence presented at trial and at earlier proceedings further indicates that the arrests and confiscations of property were pursuant to a City policy and that City officials were aware of such a policy towards the homeless. See also March 18, 1991 Order at 18 (regarding existence of a custom or practice of confiscating and destroying homeless persons' property); cf. *Stone v. Agnos*, 960 F.2d 893, 896 (9th Cir.1992) (rejecting homeless man's claim that his property, which was seized after he refused to leave public plaza, was destroyed in violation of the fourth amendment because neither mayor nor police chief effected destruction and such destruction was against city policy).

30. The court further finds that the City's seizure and destruction of plaintiffs' personal property violate the fifth amendment, which prohibits the taking of private property for public use without just compensation. U.S. Const. amend. V.

The City argues that plaintiffs' fifth amendment claim must fail because they have not

shown that their property was taken for a "public use." However, the United States Supreme Court has defined "public use" very broadly. See *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 240, 104 S.Ct. 2321, 2329, 81 L.Ed.2d 186 (1984). In *Midkiff*, the Court stated that "[t]he 'public use' requirement is . . . coterminous with the scope of a sovereign's police powers," *id.*, and that the proper test is whether "exercise of the eminent domain power is rationally related to a conceivable public purpose," *id.* at 241, 104 S.Ct. at 2329. In rejecting the argument that the government must use or possess the condemned property, the Court stated that "it is only the taking's purpose, and not its mechanics, that must pass scrutiny under the Public Use Clause." *Id.* at 244, 104 S.Ct. at 2331. Similarly, under the *Midkiff* analysis, the fact that the City does not actually use or possess the property taken from the homeless does not mean that there is no "public use," and therefore no taking under the fifth amendment.

Although the evidence does substantiate plaintiffs' claim that there have been "takings" of class members' property, the more difficult question in this case is how plaintiffs may be "justly compensated." The Supreme Court has defined "just compensation" as placing the property owner in the same position monetarily as he would have been if his property had not been taken. *United States v. Reynolds*, 397 U.S. 14, 16, 90 S.Ct. 803, 805, 25 L.Ed.2d 12 (1970). The court is unable to address this issue based on the evidence presented. Consequently, the issue of "just compensation" will have to be the subject of a separate evidentiary hearing.

sessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S.Ct. 1652, 1656, 80 L.Ed.2d 85 (1984). For the reasons discussed below, we have no difficulty concluding that the gathering and destruction of class members' personal property is a meaningful interference with their possessory interest in that property. Balancing the "nature and quality of the intrusion on the [class members'] fourth amendment interests against the importance of the governmental interests alleged to justify the intrusion," such seizures unquestionably have more than a "*de minimis* impact" on the property interests of the homeless. See *Jacobsen*, 466 U.S. at 125, 104 S.Ct. at 1663. The more difficult question is whether an individual has a legitimate privacy interest in property that is seized in a public area.

[17] Determining the nature of any legitimate expectation of privacy plaintiffs have in their personal property involves two inquiries: first, whether the individual has a subjective expectation of privacy in the belongings; and second, whether that expectation is one that society is prepared to recognize as reasonable. See *Wells v. Florida*, 402 So.2d 402, 404 (Fla.1981) (citing *Smith v. Maryland*, 442 U.S. 735, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979); *Rakas v. Illinois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978); *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)).

[18] Based on the evidence presented at trial and at earlier proceedings in this case, the court finds that plaintiffs have exhibited a subjective expectation of privacy in their belongings and personal effects. Evidence presented at the March, 1991 hearing showed that the class members maintain their belongings—e.g., bags or boxes of personal effects and bedrolls—in a manner strongly manifesting an expectation of privacy. See March 18, 1991 Order at 21. As this court previously found, property belonging to homeless individuals is reasonably identifiable by its appearance and its organization in a particular area. *Id.* Typical possessions of homeless individuals include bedrolls, blankets, clothing, toiletry

items, food and identification, and are usually contained in a plastic bag, cardboard box, suitcase or some other type of container. In addition, homeless individuals often arrange their property in a manner that suggests ownership, for example, by placing their belongings against a tree or other object or by covering them with a pillow or blanket. *Id.* Such characteristics make the property of homeless persons reasonably distinguishable from truly abandoned property, such as paper refuse or other items scattered throughout areas where plaintiffs reside. Additionally, when class members leave their living areas for work or to find food, they often designate a person to remain behind to secure their belongings. Thus, whether or not they are present at their living site, plaintiffs exhibit a subjective expectation that their property will remain unmolested until they return.

Given plaintiffs' subjective expectation of privacy in their property, we must address the more difficult question of whether that expectation is legitimate, i.e., whether society is prepared to recognize plaintiffs' expectation of privacy as reasonable. Courts have identified several factors indicating whether or not a person's expectation of privacy in a particular place is one that society is prepared to recognize as reasonable. The two most relevant factors are whether the person occupying the property is a trespasser, see *Rakas v. Illinois*, 439 U.S. 128, 143–44 n. 12, 99 S.Ct. 421, 430–31 n. 12, 58 L.Ed.2d 387 (1979) (suggesting that wrongful presence on property supports no reasonable expectation of privacy); *United States v. Ruckman*, 806 F.2d 1471, 1473–74 (10th Cir.1986) (holding that person with no legal right to occupy land had no reasonable expectation of privacy in structure built thereon), and whether the property is left in a manner readily accessible and exposed to the public, see *California v. Greenwood*, 486 U.S. 35, 40–41, 108 S.Ct. 1625, 1628–29, 100 L.Ed.2d 30 (1988) (finding no reasonable expectation of privacy in garbage bags, or their contents, left for collection outside the home). Given these two factors, we must review the facts in the present case to determine whether society is prepared to recognize

privacy rights in the plaintiffs' property. Before doing so, however, it is worthwhile to emphasize that

factors such as whether the [party asserting the privacy right] was a trespasser and whether the place involved was public "are, of course, relevant as helpful guides, but should not be undertaken mechanistically. They are not ends in themselves; they merely aid in evaluating the ultimate question in all fourth amendment cases—whether the defendant had a legitimate expectation of privacy, in the eyes of our society, in the area searched."

*State v. Mooney*, 218 Conn. 85, 588 A.2d 145, 153–54 (quoting *United States v. Ruckman*, 806 F.2d at 1476 (McKay, J., dissenting)), cert. denied, — U.S. —, 112 S.Ct. 330, 116 L.Ed.2d 270 (1991).

In *Mooney*, the court found that the homeless defendant had a reasonable expectation of privacy in the contents of his duffel bag and box, which he kept under the bridge abutment where he slept. 588 A.2d at 154. In so finding, the court considered society's high degree of deference to expectations of privacy in closed containers, the fact that the containers were located in a place that the defendant regarded as his home and the fact that, because the defendant was under arrest, he could not be at the place he regarded as his home to assert his fourth amendment rights when the search occurred. *Id.* at 160. Under these circumstances, the court concluded that "society's code of values and notions of custom and civility would cause it to recognize as reasonable the defendant's expectation of privacy in his duffel bag and box." *Id.* at 161. The court further stated the following:

[t]he interior of [these items is], in effect, the defendant's last shred of privacy from the prying eyes of outsiders, including the police. Our notions of custom and civility, and our code of values, would include some measure of respect for that shred of privacy, and would recognize it as reasonable under the circumstances of this case.

*Id.* Similarly, the interior of the bedrolls and bags or boxes of personal effects belonging to homeless individuals in this case is perhaps the last trace of privacy they have. In addition, the property of homeless individuals is often located in the parks or under the overpasses that they consider their homes. As in *Mooney*, under the circumstances of this case, it appears that society is prepared to recognize plaintiffs' expectation of privacy in their personal property as reasonable.

Having determined that plaintiffs have a legitimate expectation of privacy in their personal property, the next consideration is whether the government's interest in searching or seizing the property of homeless individuals outweighs the individuals' expectation of privacy in their property. The City identifies three factors constituting its interest.

First, the City argues that any contraband or incriminating evidence that might be found during the process of inventorying homeless persons' property would be subject to challenge as "fruit of the poisonous tree." While the government has a legitimate interest in this area, the court cannot overlook the plaintiffs' interest in having their fourth amendment rights protected. This is so particularly where, as the *Mooney* court recognized, the interior of the bags, bundles or other containers in which homeless persons carry their belongings is the "last shred of privacy" they have. *Mooney*, 588 A.2d at 161. As in *Mooney*, this court finds that such property is protected by the fourth amendment, and that, if improperly seized, such seizure *should* be subject to challenge.

Second, the City contends that logistical problems associated with gathering, inventorying and storing personal property belonging to homeless persons will be unduly burdensome. Here, the City refers to its own written policy for handling personal property and found property. See Defendant's Exhibit 3 (describing "Policy for Handling Evidence, Found Property and Personal Property"). The policy requires, among other things, that property taken into custody by a police officer be marked,

tagged and packaged and that all containers be opened and the contents inventoried. *Id.* The court appreciates the City's concern about becoming a "clearinghouse" for personal property. However, following its own established procedure in treating the property of a homeless individual should place no more of a burden on the City than it does with respect to the property of any other person. For example, a homeless person's bedroll should be no more difficult to handle than a picnic blanket; possessions that are contained in a plastic bag, box or cloth bundle should be no more burdensome to inventory or store than possessions contained in a suitcase or a briefcase. In fact, the City's written policy regarding treatment of personal property expressly includes bags and boxes in its definition of containers.<sup>31</sup> Additionally, contrary to the concern expressed by the City, the City would not be expected to gather and store mattresses, cardboard shelters, lumber or illegally possessed shopping carts. The City would be required to do no more than to follow its own written policy.

Third, the City asserts its interest in having clean parks and streets. The court recognizes the City's interest in keeping its parks and public areas clear of unsightly and unsafe items. However, the City's interest in having clean parks is outweighed by the more immediate interest of the plaintiffs in not having their personal belongings destroyed. As this court previously found, the loss of items such as clothes and medicine threatens the already precarious existence of homeless individuals by posing health and safety hazards; additionally, the prospect of such losses may discourage them from leaving the parks and other areas to seek work, food or medical attention. *See* March 18, 1991 Order at 20. Furthermore, as provided in the March 18, 1991 Order, the City would not be prohibited from taking appropriate measures to guard against dangerous conditions posed by items such as mattresses with exposed springs. *Id.* at 22.

31. The policy defines containers as including, but not limited to, bags, boxes, briefcases and

[19] In sum, the property of homeless individuals is due no less protection under the fourth amendment than that of the rest of society. Requiring the City to follow its own written policy with respect to the property of the homeless class members should not be significantly more burdensome than it is with respect to any other property. Accordingly, the court finds the City liable for its unlawful seizures of class members' property.

#### G. *Due Process, Privacy and Decisional Autonomy*

##### 1. Right to Privacy and Decisional Autonomy

Plaintiffs contend that the City's arrests of homeless individuals for essential activities such as sleeping, eating, standing and congregating in public violate their fundamental privacy rights. In support of this contention, plaintiffs cite Article I, Section 23 of the Florida Constitution, which provides that "[e]very natural person has the right to be let alone and free from governmental intrusion into his private life." Plaintiffs also rely on the Florida Supreme Court's interpretation of this provision:

One of [the] ultimate goals of [this provision] is to foster the independence and individualism which is a distinguishing mark of our society and which can thrive only by assuring a zone of privacy into which not even government may intrude without invitation or consent.

The right of privacy, assured to Florida's citizens, demands that individuals be free from uninvited observation of or interference in those aspects of their lives which fall within the ambit of the zone of privacy.

*Shaktman v. State*, 553 So.2d 148, 150 (Fla.1989).

[20] Once a plaintiff shows that the government has intruded into a fundamental right of privacy, the government must show that the challenged regulation or act

luggage. *See* Defendant's Exhibit 3.

serves a compelling state interest through the least intrusive means. *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Business Reg.*, 477 So.2d 544, 547 (Fla. 1985). In *Winfield*, the court recognized that it is the state, not the federal government, which is responsible for the protection of personal privacy, *id.* at 547-48 (citing *Katz v. United States*, 389 U.S. 347, 350-51, 88 S.Ct. 507, 510-11, 19 L.Ed.2d 576 (1967)), and noted that Florida has a stronger right of privacy and greater protection from governmental intrusion than is found in the United States Constitution. *Id.* at 548. However, the court also stated that the right to privacy is not an absolute shield against all governmental intrusion and that it will yield to a compelling governmental interest. *Id.* at 547. Furthermore, before the right of privacy attaches, "a reasonable expectation of privacy must exist." *Stall v. State*, 570 So.2d 257, 260 (Fla.1990), *cert. denied*, *Long v. Florida*, — U.S. —, 111 S.Ct. 2888, 115 L.Ed.2d 1054 (1991) (quoting *Winfield*, 477 So.2d at 547).

[21] We first consider whether the zone of privacy protected by Article I, Section 23, of the Florida Constitution covers such acts as sleeping, eating or lying down in public. In determining whether a reasonable expectation of privacy exists, we look to the individual's expectation of privacy regardless of whether society recognizes that expectation as reasonable. *Shaktman*, 553 So.2d at 153 (Ehrlich, C.J., concurring). On the other hand, the "emphasis on each individual's expectations of privacy does not mean that the individual's subjective expectations are dispositive." *Id.* Rather, in any given case, the court must consider all the circumstances to determine whether an individual has a legitimate expectation of privacy. *Id.*

Plaintiffs argue that the essential, harmless activities which they are forced to conduct in public areas fall within the broad brush of Florida's right to privacy provision. Although, as discussed above, plaintiffs have shown a reasonable expectation of privacy in their personal effects, based partly on the high degree of deference to

expectations of privacy in closed containers, they have not demonstrated a reasonable expectation of privacy in performing certain activities in public places. While the focus of the right-to-privacy inquiry is the person, not the place, *see Shaktman*, 553 So.2d at 151; *Winfield*, 477 So.2d at 548, in analyzing whether a reasonable expectation of privacy exists, we cannot ignore the fact that the activities at issue in this case take place in public areas. Even in *Shaktman*, where the court placed great emphasis on the broad reach of Florida's protection of privacy rights, one factor the court considered in finding that an individual had a right to privacy in telephone records was the fact that the records were not open to the public. *Id.* at 151; *see also id.* at 153 (Ehrlich, C.J., concurring); *Stall*, 570 So.2d at 262 (holding that, although Florida's right to privacy is broader than federal right, the right to possess obscene material in the home does not equate to the right to sell it publicly).

The *Shaktman* court reasoned that although the telephone company had access to the records, the expectation of privacy was not defeated where there was no intention that the records would be divulged to any other party. *Id.* at 151 (quoting *People v. Sporleder*, 666 P.2d 135, 141 (Colo. 1983)). Implicit in the court's reasoning is that Shaktman's expectation of privacy would have been defeated, or at least diminished, if the telephone records had been open to the public. In the present case, where plaintiffs are in the unfortunate position of having to perform certain life-sustaining activities in public, this court has difficulty finding that they have a reasonable expectation of privacy in those activities.

In addition, the cases on which plaintiffs rely provide little support for their privacy argument because the cases involve either public disclosure of personal matters or government interference with personal decisionmaking. *See, e.g., Zablocki v. Redhail*, 434 U.S. 374, 384, 98 S.Ct. 673, 680, 54 L.Ed.2d 618 (1978) (recognizing individual's right to marry part of fundamental "right of privacy" implicit in fourteenth amendment's due process clause); *Roe v.*

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*Wade*, 410 U.S. 113, 152-55, 93 S.Ct. 705, 726-28, 35 L.Ed.2d 147 (1973) (addressing individual's decision to terminate pregnancy); *Griswold v. Connecticut*, 381 U.S. 479, 481-86, 85 S.Ct. 1678, 1680-83, 14 L.Ed.2d 510 (1965) (extending right of privacy to protect individual's decision about contraception); *In re Guardianship of Browning*, 568 So.2d 4, 10 (Fla.1990) (holding that right of privacy requires courts to safeguard individual's right to choose or refuse medical treatment); *In re T.W.*, 551 So.2d 1186, 1193 (Fla.1989) (extending freedom of choice concerning abortion encompassed by Florida's privacy amendment to minors); *Shaktman v. State*, 553 So.2d 148, 150 (Fla.1989) (finding privacy rights implicated by law enforcement's installation of pen register device on individual's telephone). In contrast to each of these cases, none of the activities for which plaintiffs seek protection under article I, section 23 involves public disclosure or government intrusion into matters that involve personal decisionmaking.

[22, 23] In sum, the law does not yet recognize an individual's legitimate expectation of privacy in such activities as sleeping and eating in public. Therefore, the court respectfully rejects plaintiffs contention that such activities fall within the ambit of Article I, Section 23 of the Florida Constitution and the corresponding claim.

## 2. Procedural Due Process<sup>32</sup>

[24, 25] Plaintiffs further contend that, as applied to them, the challenged ordinances violate their right to due process. To review, these ordinances prohibit sleeping in public, being in a public park after hours, obstructing the sidewalk, loitering and prowling and trespassing on public property.

The procedural due process guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution require that a criminal law be clear and precise, not

overbroad. However, a law may be overbroad, even if it is clear and precise, if it reaches conduct that is constitutionally protected, *Grayned v. City of Rockford*, 408 U.S. 104, 114, 92 S.Ct. 2294, 2302, 33 L.Ed.2d 222 (1972), or conduct that is beyond the reach of the state's police power. *Fenster v. Leary*, 20 N.Y.2d 309, 282 N.Y.S.2d 739, 229 N.E.2d 426, 428 (1967).

A number of courts have overturned vagrancy and loitering statutes on due process grounds after finding them unconstitutionally vague. Before an individual may be criminally punished, he or she must be given fair notice of what type of conduct is prohibited. *Lanzetta v. New Jersey*, 306 U.S. 451, 452, 59 S.Ct. 618, 619, 83 L.Ed. 888 (1939). Therefore, if a person of ordinary intelligence is unable to ascertain from the language of a statute what conduct will subject him to criminal penalties, the statute is unconstitutionally vague. *United States v. Harriss*, 347 U.S. 612, 617, 74 S.Ct. 808, 811, 98 L.Ed. 989 (1954). For example, writing for a unanimous Court in a leading United States Supreme Court case, Justice Douglas stated that a Jacksonville, Florida vagrancy ordinance was void for vagueness because it failed to give fair notice of the forbidden conduct and because it encouraged arbitrary arrests and convictions. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, 92 S.Ct. 839, 843, 31 L.Ed.2d 110 (1972). In *Kolender v. Lawson*, the Supreme Court overturned a California loitering statute that punished failure by any person wandering the streets to produce credible identification when so requested by a police officer. 461 U.S. 352, 361, 103 S.Ct. 1855, 1860, 75 L.Ed.2d 903 (1983). The Court held that this statute, like the vagrancy law invalidated in *Papachristou*, was too vague to satisfy the requirements of due process. *Id.* 461 U.S. at 358, 103 S.Ct. at 1858; see also *Ricks v. District of Columbia*, 414 F.2d 1097, 1100 (D.C.Cir.1968) (holding vagrancy law unconstitutional where it did not provide "reasonable degree of guidance

32. Plaintiffs also contend that the City's actions violate the substantive component of the due process clause. Because the same standard would apply under the equal protection analy-

sis, see text *infra*, the court finds it unnecessary to address separately the issues plaintiffs advance in their substantive due process argument.

to citizens, the police and the courts as to just what constitutes the offenses with which appellant is charged").

Courts also have overturned vagrancy and loitering statutes on due process grounds after finding them overbroad. A statute is overbroad when it reaches constitutionally protected conduct or conduct which is beyond the police power of the state to regulate. See *Sawyer v. Sandstrom*, 615 F.2d 311, 318 (5th Cir.1980) (striking Dade County's loitering statute as unconstitutionally overbroad because it punished essentially innocent association in violation of first amendment associational rights); *Fenster v. Leary*, 20 N.Y.2d 309, 282 N.Y.S.2d 739, 229 N.E.2d 426, 428 (1967) (finding statute violated due process and constituted overreaching of police power because it criminalized conduct that in no way impinged on others' rights and had only tenuous connection with prevention of crime and preservation of the public order); *City of Seattle v. Drew*, 70 Wash.2d 405, 423 P.2d 522, 525 (1967) (holding statute prohibiting wandering at night violated due process where it did not distinguish between "conduct calculated to harm and that which is essentially innocent").

Like the vagrancy and loitering statutes, courts have overturned statutes against sleeping in public on overbreadth grounds. In *State v. Penley*, the court declared unconstitutional an anti-sleeping ordinance which provided as follows: "No person shall sleep upon or in any street, park, wharf or other public place (Code 1955, ch. 25, § 47)." *State v. Penley*, 276 So.2d 180, 180 (Fla. 2d DCA1973). The court noted the similarity between the anti-sleeping ordinance and most vagrancy laws, namely, that both punish unoffending behavior. *Id.* at 181. The court further reasoned that the ordinance drew no distinction between conduct that is calculated to harm and that which is essentially innocent, that the ordi-

nance failed to provide fair notice of the forbidden conduct, and that the ordinance could result in arbitrary and erratic convictions. *Id.* (citations omitted). Similarly, another Florida court partially invalidated an ordinance prohibiting sleeping in cars parked on public streets because the ordinance criminalized conduct that "in no way impinge[d] on the rights or interests of others." *City of Pompano Beach v. Capalbo*, 455 So.2d 468, 470-71 (Fla. 4th DCA1984), *cert. denied*, 474 U.S. 824, 106 S.Ct. 80, 88 L.Ed.2d 65 (1985) (quoting *Lazarus v. Faircloth*, 301 F.Supp. 266, 272 (S.D.Fla.1969)). The court found that such conduct was beyond the scope of the city's police power. *Id.* But see *Seeley v. State*, 134 Ariz. 263, 655 P.2d 803 (Ariz.App.1982) (finding ordinance prohibiting lying, sleeping or sitting on public streets or sidewalks constitutional).

The City maintains that plaintiffs' due process claim must fail because none of the challenged ordinances is facially vague. However, plaintiffs have not challenged any of the ordinances on vagueness grounds;<sup>33</sup> rather, plaintiffs contend that the ordinances are overbroad, as applied to them, because they reach conduct that is beyond the reach of the City's police power. In addition, plaintiffs do not argue that the challenged ordinances should be stricken. Rather, as in their eighth amendment argument, plaintiffs ask that the City be enjoined from arresting homeless individuals for harmless, involuntary conduct. We now consider plaintiffs' due process claim based on overbreadth.

As with their eighth amendment argument, plaintiffs challenge the City's practice, under any ordinance, of arresting homeless individuals for harmless acts that they are forced to perform in public. For example, arresting a homeless person under the park closure ordinance may reach

33. Accordingly, this court does not reach the question of whether any of the ordinances is facially vague. We do note however, that some of the ordinances appear to be subject to challenge on facial vagueness grounds. For example, the ordinance against disorderly conduct, which provides that a "person shall be deemed

guilty of disorderly conduct who: ... (2) [i]s idle, dissolute or found begging," Miami, Fla., Code § 37-17 (1990), would probably not survive a facial challenge under *Papachristou v. City of Jacksonville*, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972).



any number of innocent and essential acts such as sleeping, lying down, or eating.

At first glance, it appears that the law of this circuit may not support plaintiffs' overbreadth claim. In analyzing a challenge to an anti-sleeping ordinance on overbreadth grounds, the Eleventh Circuit has stated as follows:

The concept of overbreadth will usually only apply when a case involves constitutionally protected conduct. Such a challenge will be upheld only when "the enactment reaches a substantial amount of constitutionally protected conduct. If it does not, then the overbreadth challenge must fail." *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 494, 102 S.Ct. 1186, 1191, 71 L.Ed.2d 362 (1982). Nothing in the pertinent ordinance is aimed at curbing expressive conduct; the sleeping prohibited appears to be "of the general kind, which enjoys no peculiar constitutional advantage." *People v. Davenport*, 222 Cal.Rptr. 736, 738, 176 Cal.App.3d Supp. 10 (Cal.Super.1985), cert. denied, 475 U.S. 1141, 106 S.Ct. 1794, 90 L.Ed.2d 339 (1986). The overbreadth challenge, then, would probably fail because the Clearwater ordinance did not reach a substantial amount of constitutionally protected activity (and probably reached no constitutionally protected conduct at all): it was in the nature of a valid exercise of the city's broad police powers.

*Hershey v. City of Clearwater*, 834 F.2d 937, 940 n. 5 (11th Cir.1987) (citing *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984)). Arguably, based on the above-quoted footnote in *Hershey*, plaintiffs have not established that the park closure ordinance, or any other ordinance, "reaches a substantial amount of constitutionally protected conduct." *Id.* The acts of sleeping, sitting down or eating in themselves are not constitutionally protected. However, unlike *Hershey*, under the unique circumstances of this case, the challenged ordinances as applied to class members do implicate constitutionally protected rights under the eighth amendment and, as discussed in greater detail below, the equal

protection clause of the fourteenth amendment.

While sleeping "of the general kind" may "enjoy no peculiar constitutional advantage," *id.*, under the facts of this case arresting plaintiffs for performing innocent conduct in public places—in particular, for being in a park or on public streets at a time of day when there is no place where they can lawfully be—most definitely interferes with their right under the constitution to be free from cruel and unusual punishment and, as will be addressed, their right to freedom of movement. Thus, plaintiffs have shown that the challenged ordinances as applied to them are overbroad to the extent that they result in class members being arrested for harmless, inoffensive conduct that they are forced to perform in public places. Accordingly, the court finds the City liable as to this count.

#### H. Equal Protection

[26] The equal protection clause of the fourteenth amendment prohibits any state from "deny[ing] to any person within its jurisdiction the equal protection of the laws." In other words, it requires that all persons similarly situated be treated alike. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985). The general rule is that legislation is presumed to be valid and should be sustained if the classification it draws is rationally related to a legitimate state interest. *Id.* at 440, 105 S.Ct. at 3254. However, when government actions discriminate on the basis of a suspect classification, such as race, alienage or national origin, they are subject to strict scrutiny and will be sustained only if they are "suitably tailored to serve a compelling state interest." *Id.* Actions or statutes that classify by gender or illegitimacy are also subject to heightened scrutiny and will be sustained only if they are substantially related to a sufficiently important state interest. *Id.* at 440–41, 105 S.Ct. at 3254–55. In addition, government classifications that infringe on constitutionally protected rights also require heightened scrutiny. See *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 904, 106 S.Ct.

2317, 2321, 90 L.Ed.2d 899 (1986) (plurality opinion).

### 1. Suspect Class

Plaintiffs claim that they are a suspect class based on their involuntary status of being homeless. They argue that, because there are only two types of property in this country, public and private, and because the homeless have no access to private property, they are an insular minority which has no place to retreat from the public domain.

A classification is suspect if it is directed to a "discrete and insular minority." *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n. 4, 58 S.Ct. 778, 783 n. 4, 82 L.Ed. 1234 (1938). As stated, courts have found that race, alienage, national origin, and to a lesser degree, gender and illegitimacy, are suspect classes. See, e.g., *Cleburne*, 473 U.S. at 440, 105 S.Ct. at 3254. However, the United States Supreme Court repeatedly has held that classifications based on wealth alone are not suspect. See, e.g., *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 458, 108 S.Ct. 2481, 2487, 101 L.Ed.2d 399 (1988) ("We have previously rejected the suggestion that statutes having different effects on the wealthy and the poor should on that account alone be subjected to strict equal protection scrutiny.") (citing *Harris v. MacRae*, 448 U.S. 297, 322-23, 100 S.Ct. 2671, 2691, 65 L.Ed.2d 784 (1980) (noting that poverty, standing alone, is not a suspect classification); *Maher v. Roe*, 432 U.S. 464, 470-71, 97 S.Ct. 2376, 2380-81, 53 L.Ed.2d 484 (1977) ("[T]his Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Ortwein v. Schwab*, 410 U.S. 656, 660, 93 S.Ct. 1172, 1175, 35 L.Ed.2d 572 (1973) (rejecting argument that filing fee discriminates against poor where no suspect classification such as race, nationality or alienage is present). See also *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1269 n. 6 (3d Cir.1992) (summarily concluding that homeless do not constitute a suspect class).

In concluding that poverty is not a suspect classification, the Supreme Court has stated as follows:

The system of alleged discrimination and the class it defines have none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.

*San Antonio School Dist. v. Rodriguez*, 411 U.S. 1, 28, 93 S.Ct. 1278, 1294, 36 L.Ed.2d 16 (1973). This court is not entirely convinced that homelessness as a class has none of these "traditional indicia of suspectness." It can be argued that the homeless are saddled with such disabilities, or have been subjected to a history of unequal treatment or are so politically powerless that extraordinary protection of the homeless as a class is warranted. However, resolution of this issue is beyond the scope of the evidence presented at trial and, in any event, is unnecessary for, as discussed below, we resolve the question of the appropriate standard to apply based on our determination that the City has infringed upon plaintiffs' fundamental right to travel.

### 2. Fundamental Rights

Plaintiffs claim that the City's actions have infringed directly on their fundamental right to engage in life-sustaining activities in public and indirectly on their fundamental right to travel.

Plaintiffs argue that the life-sustaining activities they must perform in public are "fundamental" rights. However, plaintiffs have offered no legal support for their contention that these are rights that a court may recognize as "fundamental" for purposes of equal protection analysis. On the other hand, the United States Supreme Court has long recognized the right to travel as a fundamental constitutional right. For example, in *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969), the Court held that any classification penalizing the exercise of the fundamental right to travel is unconstitutional.

absent a showing that it is necessary to promote a compelling governmental interest. *Id.* at 634, 89 S.Ct. at 1330; *see also Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 902 n. 2, 106 S.Ct. 2317, 2321 n. 2, 90 L.Ed.2d 899 (1986) (stating that right to travel receives "its most forceful expression in the context of equal protection analysis") (quoting *Zobel v. Williams*, 457 U.S. 55, 67, 102 S.Ct. 2309, 2316, 72 L.Ed.2d 672 (1982) (Brennan, J., concurring)); *Sosna v. Iowa*, 419 U.S. 393, 409-10, 95 S.Ct. 553, 562-63, 42 L.Ed.2d 532 (1975) (addressing right to travel in context of due process analysis); *United States v. Guest*, 383 U.S. 745, 757, 86 S.Ct. 1170, 1177, 16 L.Ed.2d 239 (1966) (noting that constitutional right to travel is fundamental right that has been "firmly established and repeatedly recognized").

Although the Supreme Court has not directly addressed the question of whether the right to travel includes intrastate travel, the Court has found that arresting individuals for loitering or wandering on public streets without identification "implicates consideration of the constitutional right to freedom of movement." *Kolender v. Lawson*, 461 U.S. 352, 358, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983); *see also Papachristou v. City of Jacksonville*, 405 U.S. 156, 164, 92 S.Ct. 839, 844, 31 L.Ed.2d 110 (1972) (stating that "wandering and strolling" are "historically part of the amenities of life as we have known them"). In addition, lower courts specifically have found that the right extends to travel that occurs within one state. *See, e.g., King v. New Rochelle Municipal Housing Auth.*, 442 F.2d 646, 648 (2d Cir.) (finding five-year residency requirement for state-subsidized housing violated rights of interstate and intrastate plaintiffs), *cert. denied*, 404 U.S. 863, 92 S.Ct. 113, 30 L.Ed.2d 107 (1971); *Lutz v. City of York*, 899 F.2d 255, 268 (3d Cir. 1990) ("the right to move freely about one's neighborhood or town . . . is indeed 'implicit in the concept of ordered liberty' and 'deeply rooted in the Nation's history'") (citation omitted); *Stoner v. Miller*, 377 F.Supp. 177, 180 (E.D.N.Y.1974) ("It is immaterial whether travel is interstate or intrastate."); *see also Ades, The Constitu-*

*tionality of "Antihomeless" Laws: Ordinances Prohibiting Sleeping in Outdoor Public Areas as a Violation of the Right to Travel*, 77 Cal.L.Rev. 595, 609-13 (1989) (hereafter "*Antihomeless Laws*") (discussing decisions supporting fundamental right to intrastate travel). In *King*, the court stated that it would be "meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state." 442 F.2d at 648. Based on this line of cases, the City's arrests of the homeless may burden their fundamental right to travel even if the effect on their freedom of movement occurs only intrastate.

The right to travel can be burdened in a number of ways. For example, in *Shapiro v. Thompson* the Supreme Court struck down statutes denying welfare assistance to residents who had not resided in a state for at least one year on the grounds that the statutes effectively penalized interstate travel. 394 U.S. at 634, 89 S.Ct. at 1330. The court stated that "moving from State to State or to the District of Columbia, appellees were exercising a constitutional right, and any classification which serves to penalize that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional." *Id.* (citations omitted) (emphasis in original). Similarly, in *Memorial Hospital v. Maricopa County*, the Court found that a statute which conditioned free medical care on a one-year residency requirement violated the equal protection clause because it penalized the exercise of the right to travel by denying a basic "necessity of life." 415 U.S. 250, 259, 94 S.Ct. 1076, 1082, 39 L.Ed.2d 306 (1974). The Court further held that actual deterrence of travel was not a requisite to finding a violation of the equal protection clause. *Id.* at 257-58, 94 S.Ct. at 1081-82 (citing *Dunn v. Blumstein*, 405 U.S. 330, 339-40, 92 S.Ct. 995, 1001-02, 31 L.Ed.2d 274 (1972) (finding durational-residence requirement for voter registration penalized the right to travel)).

In *Edwards v. California*, 314 U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119 (1941), the Su-

preme Court held unconstitutional a law prohibiting the transportation of "indigents" into California. While the majority based its decision on the commerce clause, four Justices concluded that the statute impermissibly erected a barrier to interstate travel by indigents. Justice Douglas found that the challenged statute "prevents a citizen because he [is] poor from seeking new horizons in other States." *Id.* at 181, 62 S.Ct. at 170 (Douglas, J., concurring). Also finding that the statute infringed upon the right to travel, Justice Jackson stated as follows:

Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but also is a short-sighted blow at the security of property itself. Property can have no more dangerous, even if unwitting, enemy than one who would make its possession a pretext for unequal or exclusive civil rights.

*Id.* at 182, 62 S.Ct. at 171 (Jackson, J., concurring).

Courts also have found that laws infringe on the right to travel where their primary objective is to impede migration. One court struck a zoning ordinance that limited the construction of new homes because its express purpose and intended and actual effect was to exclude large numbers of people who otherwise would have immigrated to the city. See *Construction Industry Association v. City of Petaluma*, 375 F.Supp. 574, 581 (N.D.Cal.1974), *rev'd on other grounds*, 522 F.2d 897 (9th Cir. 1975).

One commentator argues persuasively that anti-sleeping ordinances can burden the right to travel of homeless individuals when they create direct barriers to travel, are intended to impede travel or penalize migration. *Antihomeless Laws* at 616.

34. For example, even where there is available space in a shelter, it may not be a viable alternative "if, as is likely, the shelter is dangerous, drug infested, crime-ridden, or especially unsanitary.... Giving one the option of sleeping in a

This is so particularly when no alternative shelters are available because laws that prevent homeless individuals from seeking shelter in the limited areas that do exist result in their facing the choice of being arrested for violating the law or of leaving the jurisdiction altogether.<sup>34</sup>

[27, 28] Like the anti-sleeping ordinances, the City's enforcement of laws that prevent homeless individuals who have no place to go from sleeping, lying down, eating and performing other harmless life-sustaining activities burdens their right to travel. As the Supreme Court explained, laws penalize travel if they deny a person a "necessity of life," such as free medical care. *Memorial Hosp.*, 415 U.S. at 258-59, 94 S.Ct. at 1082-83. Similarly, preventing homeless individuals from performing activities that are "necessities of life," such as sleeping, in any public place when they have nowhere else to go effectively penalizes migration. Indeed, forcing homeless individuals from sheltered areas or from public parks or streets affects a number of "necessities of life"—for example, it deprives them of a place to sleep, of minimal safety and of cover from the elements.

In addition to depriving homeless individuals of certain life necessities, arresting them for such harmless conduct also acts as a deterrent to their movement. Although, unlike the anti-sleeping ordinances, the park closure ordinance is not in effect twenty-four hours a day, homeless individuals are subject to arrest for being in public places under other ordinances, for example, for loitering or for obstructing the sidewalk. The evidence overwhelmingly shows that plaintiffs have no place where they can be without facing the threat of arrest. Given the vast number of homeless individuals and the disproportionate lack of shelter space, the plaintiffs truly have no place to go. Because they offer no protection from the elements or from crime, many of the plaintiffs' choices for alternative shel-

space where one's health and possessions are seriously endangered provides no more choice than does the option of arrest and prosecution." *Antihomeless Laws* at 620 n. 183.

ter—e.g., the space under bridges or the streets—cannot be considered reasonable or realistic choices at all. Consequently, the enforcement of ordinances, e.g., against being in the park after hours or against loitering, effectively bans homeless individuals from all public areas and denies them a single place where they can be without violating the law. Like the anti-sleeping ordinances, enforcement of the challenged ordinances against homeless individuals significantly burdens their freedom of movement. It has the effect of preventing homeless people from coming into the City. Primarily, however, it has the effect of expelling those already present and of significantly burdening their freedom of movement within the City and the state. For example, a homeless person who is forced to sleep in public must keep moving within the city or leave it altogether to avoid being arrested.

Finally, as discussed above, various internal memoranda admitted into evidence at trial indicate that, at least in the past, the primary purpose behind enforcing the challenged ordinances against homeless persons was to drive them from public areas. See Plaintiffs' Exhibits 2-7. This purpose was also evidenced by the arrest records showing the shift to other ordinances for arresting homeless individuals after the City stopped enforcing the ordinance against sleeping in public and by the internal memoranda revealing the City's active search for laws to replace the anti-sleeping ordinance.

In sum, whether characterized as a penalty, a deterrent or a purposeful expulsion, enforcement of the ordinances against the homeless when they have absolutely no place to go effectively burdens their right to travel. Having concluded that arresting class members infringes upon their right to travel, we next consider whether the City's action of arresting plaintiffs for harmless, life-sustaining conduct serves a compelling

state interest through the least intrusive means.

The interests advanced by the City to justify the arrests of homeless individuals for conduct such as congregating under bridges, lying down on public sidewalks or being in the park after hours may be summarized as follows. The City contends that it has a compelling interest in keeping its parks and streets free of litter, vandalism and general deterioration; in preventing crime and ensuring safety in public parks; and in promoting tourism, business and the development of the downtown area, which are negatively affected by the presence of the homeless. We must weigh these interests to determine whether or not they are compelling and, if so, whether they are accomplished through the least intrusive means.

The City claims that it has a compelling interest in maintaining its parks and public areas, an interest which is related to its desire to promote tourism, business and the downtown area. The City has a legitimate interest in having aesthetically pleasing parks and streets and in maintaining facilities in public areas. However, this interest is not compelling, especially in light of the necessity of homeless persons to be in some public place when no shelter is available. The Supreme Court has recognized the governmental interest in park maintenance as being only "substantial,"<sup>35</sup> which does not satisfy the "compelling governmental interest" standard. See, e.g., *Williams v. Rhodes*, 393 U.S. 23, 31-34, 89 S.Ct. 5, 10-12, 21 L.Ed.2d 24 (1968) (finding compelling state interest standard not satisfied despite existence of substantial and desirable governmental interests). Similarly, the City's interest in promoting tourism and business and in developing the downtown area are at most substantial, rather than compelling, interests.

Even assuming these asserted interests

interest in maintaining park as "substantial" in upholding prohibition against camping, includ-

35. See *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 296, 104 S.Ct. 3065, 3070, 82 L.Ed.2d 221 (1984) (recognizing government

could be considered compelling,<sup>36</sup> the City could certainly accomplish them through some manner that is less intrusive than arresting homeless individuals. Provision of alternative shelter and services would be the ideal means of accomplishing the same goals. However, in the absence of available shelter space or funds for services, the parks and streets could be cleaned and maintained without arresting the homeless. For example, the City could ask homeless individuals to relocate temporarily to another public area while maintenance crews work on a particular site. It could also establish regular times for each park to be cleaned so that homeless individuals would know not to be in a certain park on a particular day. Instead of arresting homeless individuals for being in the park after hours, the City could allow them to stay in a designated area in exchange for maintaining that area. Similarly, promotion of tourism and business and the development of the downtown area could be accomplished without arresting the homeless for inoffensive conduct. Because the City's interests in maintaining public areas and in promoting tourism and business can be achieved without arresting homeless individuals, these interests cannot justify the burden that the arrests place on the right to travel.

The City further contends that it has a compelling interest in ensuring that its parks are free of crime. The court recognizes the tremendous responsibility that the City has and agrees that the City's interest in this regard is a compelling one. However, the City has not shown that arresting the homeless for being in the park after hours when they have no place else to go is the least intrusive means of addressing the interest in crime prevention.<sup>37</sup>

The City claims that the arrests are necessary, or at least justified, because unlike the arrests made under vagrancy ordinances, the arrests of homeless individuals

under various ordinances are effected after citizens file complaints and police officers observe other criminal activity. However, the arrests records and the internal police memoranda refute this contention. This evidence shows that numerous arrests were made not in response to citizen complaints, but as a result of police sweeps targeting areas where the homeless were known to reside or congregate.

The City further argues that it would be disingenuous to ignore the criminal element among the homeless. However, there is a criminal element among all of society, not just among the homeless. The United States Supreme Court, in rejecting the idea that criminality can be ascribed to the unfortunate, stated that no one can seriously contend that a person without funds and without a job constitutes a "moral pestilence." *Edwards v. California*, 314 U.S. 160, 177, 62 S.Ct. 164, 168, 86 L.Ed. 119 (1941). The Court further stated that "[p]overty and immorality are not synonymous." *Id.*; see also *Papachristou*, 405 U.S. at 171, 92 S.Ct. at 848 (criticizing presumption of criminality in vagrancy statutes). In fact, the City presented no evidence that a homeless person committed any of the crimes reported in the citizen complaints. Furthermore, as the narrative sections of the arrest records show, many of the homeless individuals arrested under the park closure ordinance were doing nothing more than sleeping. See Plaintiffs' Exhibits 1A-1AAA.

In addressing a recent first amendment challenge by homeless people to a statute prohibiting begging, one court considered whether arresting homeless individuals for begging was a sufficiently narrow means of serving the government's interest in preserving public order and preventing crime. *Loper v. New York City Police Dept.*, 802 F.Supp. 1029, 1046 (S.D.N.Y.1992). The court stated as follows:

ing ban on sleeping overnight, in national parks).

36. The City's interest in maintaining public areas for the purpose of preventing health hazards would be compelling.

37. As is implicit in this order, the court does not in any manner intimate that police officers should not arrest promptly any of the homeless for any criminal activity.

A peaceful beggar poses no threat to society. The beggar has arguably only committed the offense of being needy. The message one or one hundred beggars sends society can be disturbing. If some portion of society is offended, the answer is not in criminalizing those people, debtor's prisons being long gone, but addressing the root cause of their existence. The root cause is not served by removing them from sight, however; society is then just able to pretend that they do not exist a little longer.

*Id.* Similarly, although the idea of homeless people sleeping in public parks may disturb or offend some portion of society, the answer is not in arresting individuals who have arguably only committed the offense of being without shelter. There exist other means of preventing crime that are less drastic than arresting the homeless for harmless conduct that poses no threat to society. Rather than arrest the homeless, the City could increase police patrols of the park. It could allow homeless persons who have no alternative place to sleep to remain in a limited area instead of banishing them from the park entirely. In addition, the City could issue warnings to both homeless and non-homeless people about high-crime areas. In short, arresting homeless people is not the least intrusive means of achieving the City's compelling interest in preventing crime in public parks. Accordingly, the court rejects the City's contention that its interest in crime prevention justifies the infringement on the fundamental right to travel.

In summary, arresting homeless individuals for such harmless acts as sleeping, eating, or lying down in public generally serves no compelling governmental interest. Furthermore, in no case are such arrests the least intrusive means of accomplishing the City's interests. Consequently, arresting the homeless for the harmless acts which they are forced to perform in public infringes on their fundamental right to travel.

#### IV. CONCLUSION

For the reasons set forth above, the court finds that plaintiffs have established

that the City has a policy and practice of arresting homeless individuals for the purpose of driving them from public areas. The court concludes that the City's practice of arresting homeless individuals for performing inoffensive conduct in public when they have no place to go is cruel and unusual in violation of the eighth amendment, is overbroad to the extent that it reaches innocent acts in violation of the due process clause of the fourteenth amendment and infringes on the fundamental right to travel in violation of the equal protection clause of the fourteenth amendment. The court further concludes that the City's seizure of plaintiffs' personal property violates their fourth amendment rights. For these reasons, the court finds that plaintiffs' claim for injunctive relief is warranted.

As a threshold matter, this court finds that it can fashion relief with the specificity required by Rule 65(d) of the Federal Rules of Civil Procedure. Unlike December of 1988, when this court denied plaintiffs' application for injunctive relief because it was unable to redress the general allegation of "harassment" of homeless individuals with the requisite specificity, the court now has before it plaintiffs' more detailed allegations of specific conduct. Additionally, the court has had the benefit of having heard substantial evidence, which brings greater definition to the problems of homelessness as they affect both parties.

Obviously, the ideal solution would be to provide housing and services to the homeless. However, assembling and allocating such resources is a matter for the government—at all levels—to address, not for the court to decide. Rather, our immediate task is to fashion relief that accommodates the two predominant interests in this litigation. First, such relief must protect the homeless from one approach that clearly is not the answer to homelessness, that is, arresting homeless people for innocent, involuntary acts. Second, any relief granted must not unduly hamper the City's ability to preserve public order. For these reasons and for the reasons set forth above in the findings of fact and conclusions of law, it is

ORDERED AND ADJUDGED that

(1) The City's practice of arresting homeless individuals for the involuntary, harmless acts they are forced to perform in public is unconstitutional because such arrests are cruel and unusual in violation of the eighth amendment, reach innocent and inoffensive conduct in violation of the due process clause of the fourteenth amendment and burden the fundamental right to travel in violation of the equal protection clause; and

(2) The City's practice of seizing and destroying the property of homeless individuals without following its own written procedure for handling found or seized personal property violates plaintiffs' rights under the fourth amendment. Accordingly, it is further

ORDERED AND ADJUDGED that plaintiffs' request for injunctive relief is granted as follows:

(3) The City, through its Police Department, is enjoined from arresting homeless individuals who are forced to live in public for performing innocent, harmless, inoffensive acts such as sleeping, eating, lying down or sitting in at least two public areas to be agreed upon by the parties;

(4) Counsel for both parties are directed to meet within fifteen (15) days from the date of this order to establish two "safe zones" where homeless people who have no alternative shelter can remain without being arrested for harmless conduct such as sleeping or eating. In establishing these arrest-free zones, counsel should consider the proximity of the areas to feeding programs, health clinics and other services. In addition, the parties are encouraged to develop a procedure for maintaining the areas.<sup>38</sup> Counsel are directed to submit a joint report within thirty (30) days regarding the outcome of their meeting.

(5) Until the parties reach an agreement on two arrest-free zones, the City is enjoined from arresting homeless individuals for sleeping or eating in a portion of Bicen-

ennial Park to be designated by the City and in the area beneath the I-395 overpass that is still occupied by the homeless;

(6) The court emphasizes that nothing in this order prevents the City from arresting any individual for any criminal activity or for any conduct that is harmful to others or to himself. In addition, nothing in this order affects the ability of police officers to make arrests on private property;

(7) As in the March 18, 1991 order, the City, through the Police Department or any other city department, is enjoined from destroying property which it knows or reasonably should know belongs to homeless individuals. In determining whether property belongs to the homeless, police officers and other city officials should consider factors such as the nature and appearance of the items. As discussed above, property belonging to the homeless is typically located in areas where the homeless congregate or reside and is often arranged in a manner suggesting ownership;

(8) In addition, the City shall follow its own written procedure concerning the handling of personal property and found property. *See* Defendant's Exhibit 3 (describing "Policy for Handling Evidence, Found Property and Personal Property"). This requirement does not apply to property that poses a health or safety hazard; and

(9) To avoid hindering the City's ability to maintain public parks, while at the same time protecting plaintiffs' property interests, the City is encouraged to arrange the cleaning schedule agreed to by the parties in their June 12, 1992 report. *See* Parties' Report on Defendant's Motion Seeking Clarification of Order Entered March 18, 1991, filed June 12, 1992 (D.E. 250) (setting forth parties' agreement, at least during pendency of suit, as to procedure for handling property of homeless). The City is also directed to provide the public with at least five days' notice of the days and times that particular parks will be cleaned. This

<sup>38</sup>. For example, a cleaning schedule could be established which would involve the partic-

ipation of homeless individuals in maintaining the areas where they are permitted to stay.



**POTTINGER v. CITY OF MIAMI**

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**Cite as 810 F.Supp. 1551 (S.D.Fla. 1992)**

will enable homeless individuals to move their property temporarily from the area scheduled to be cleaned to a nearby place designated by the City.

(10) Plaintiffs' Unopposed Motion to Supplement Trial Record with Exhibits (D.E. 271) is GRANTED.

DONE AND ORDERED.

Finally, it is ORDERED AND ADJUDGED that



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-2406-CIV-ATKINS

MICHAEL POTTINGER, PETER  
CARTER AND BERRY YOUNG

Plaintiffs,

vs.

CITY OF MIAMI,

Defendant.

NIGHT BOX  
FILED

FEB 4 1998

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

*Handwritten signature*

**SETTLEMENT AGREEMENT**

The Plaintiffs, MICHAEL POTTINGER, et al., and the class of Plaintiffs they represent (hereinafter collectively referred to as "Plaintiffs"), and the Defendant, THE CITY OF MIAMI (hereinafter "CITY"), by and through their respective undersigned counsel, agree to the complete settlement of this litigation, subject to the approval of this Court, on the following terms and conditions:

**I. Introduction**

1. This is a lawsuit by Plaintiffs against the CITY for violation of various civil liberties and constitutional rights pursuant to Title 42, U.S.C. section 1983 *et seq.* The lawsuit was filed in December, 1988. The district court certified this case as a class action lawsuit. *Pottinger v. City of Miami*, 720 F.Supp. 955 (S.D. Fla. 1989). On November 16, 1992, the district court entered its Findings of Fact and Conclusions and Order on Plaintiffs' Request for Declaratory and Injunctive Relief. *Pottinger v. City of Miami*, 810 F.Supp. 1551 (S.D. Fla. 1992). The district

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court ruled that the CITY, through a municipal policy, violated various constitutional rights of the Plaintiffs, involuntarily homeless residents of Miami. Accordingly, this court enjoined the CITY from arresting Plaintiffs for the involuntary, harmless acts they were forced to perform in public and seizing and destroying the Plaintiffs' property without following its own procedures for handling found or seized property. *Id.* at 1584. The district court also directed the establishment of two or more arrest-free zones where the CITY would be enjoined from arresting homeless individuals for engaging in such harmless, involuntary conduct.

2. The City appealed the district court's judgment. Following briefing and oral argument, the Eleventh Circuit Court of Appeals remanded the case to the district court to make further findings of fact and to clarify its judgment. *Pottinger v. City of Miami*, 40 F.3d 1155 (11th Cir. 1994). On April 7, 1995, following an evidentiary hearing, the district court entered its Findings and Order on Limited Remand from the Eleventh Circuit Court of Appeals. The district court ultimately concluded that "[t]hough improvement in the overall situation is occurring via the [Dade County Homeless Assistance] Trust," "the salient facts of this case have not changed substantially . . . ." Thus, the district court determined that its original injunction should remain in effect with few modifications.

3. On February 7, 1996, following further briefing and oral argument, the Eleventh Circuit Court of Appeals entered its Interim Order referring this matter to its Chief Circuit Mediator for settlement discussions. *Pottinger v. City of Miami*, 76 F.3d 1154 (11th Cir. 1996). Accordingly, the parties have engaged in extensive settlement negotiations and have agreed to resolve each and every remaining issue in this case as set forth herein.

  
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**SETTLEMENT AGREEMENT  
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4. As a result of this lawsuit, the CITY has participated in a countywide effort to provide services and assistance to homeless people. In keeping with these past and ongoing efforts, the CITY is committed to ensuring that the legal and constitutional rights of all homeless persons be fully respected by all city policies, rules, regulations, practices, officials and personnel.

**II. Dismissal/Release**

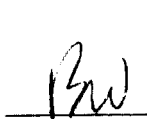
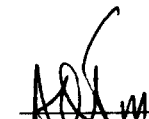
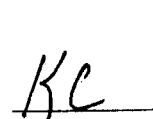
5. The parties agree that this lawsuit, including the three pending appeals, Case Nos. 91-5316, 92-5145, and 95-4555, will be dismissed with prejudice and without costs or attorneys fees (except such attorneys fees as are specifically provided for herein), subject to the terms of this Settlement Agreement and the District Court retaining jurisdiction to enforce this Settlement Agreement. Upon the District Court's approval of this Settlement Agreement, this Settlement Agreement shall operate as a general release of the CITY (including its agents, officers, and employees) for all claims of all class members between December 23, 1984, and the effective date of this Settlement Agreement for the types or kinds of injuries alleged in the Plaintiffs' Second Amended Complaint (docketed September 8, 1989) in this action. This release does not cover injuries suffered by class members which were outside the scope of the Plaintiffs' Second Amended Complaint (docketed September 8, 1989).

**III. No Admission of Liability**

6. The CITY does not admit liability by virtue of entering into this Settlement Agreement.

**IV. Law Enforcement Training**

7. The City agrees to implement, various forms of training (as specified herein) for its

  
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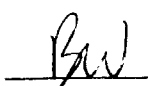
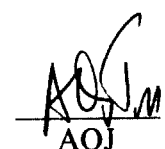
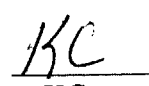
law enforcement officers for the purpose of sensitizing them to the unique struggle and circumstances of homeless persons and to ensure that their legal rights shall be fully respected.

This training shall include, either (A & C) or (B & C) below, but not both A & B:

A. **Training and education provided at the School of Justice and Safety Administration at Miami Dade Community College - North Campus (hereinafter ACADEMY).** The CITY shall attempt to secure approval by the governing Board of the ACADEMY for training that includes instruction by academics, service providers, or homeless persons and shall focus on the causes of homelessness and the circumstances, needs, and rights of homeless persons.

B. **Post-Academy Training.** If the CITY is unsuccessful in securing approval by the governing Board of the ACADEMY for training that includes instruction by academics, service providers, or homeless persons focusing on the causes of homelessness, circumstances, needs, and rights of homeless persons, said training shall be taught in Post-Academy Training. This three week post-Academy course presently taught by the Miami Police Department, and any modification or change in the course to be incorporated in the future, shall include education and training similar to that specified above with an emphasis on local issues concerning homelessness in Miami and the City of Miami Police Department's law enforcement protocol (as set forth below).

C. **In-Service Training.** This training, including the Survival Training Course, roll calls, NOBLE training, and other formal/informal training, shall contain segments that focus on local homeless issues, the City of Miami Police Department's law enforcement protocol,

  
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and current issues involving law enforcement, provision of services, and patterns of contact with homeless persons.


**V. Adoption of Departmental Order**


7. The City of Miami Police Department shall adopt a Departmental Order (D.O.) regarding the treatment of the homeless within the CITY which reflects the CITY's commitment to respect the rights of homeless people and implements the protocol which law enforcement officers must follow when they encounter homeless persons. This departmental order is attached as Exhibit A, and it may be revised from time to time to reflect future technical (non-substantive) changes in police procedures. This departmental order shall be circulated to, and read by, all City of Miami police officers within 30 days after this Settlement Agreement is approved by the district court. It shall also be read by all future City of Miami police officers in the course of their normal training.

**VI. Compliance/Enforcement**

9. The CITY hereby expressly adopts a policy as provided for herein to protect the constitutional rights of homeless persons, to prevent arrests and harassment of these persons, and the destruction of their property, inconsistent with the provisions of this Settlement Agreement. Any activities by a CITY police officer or other employee that are contrary to this policy shall cease immediately. Any CITY police officer or other employee of the CITY who is determined to be acting contrary to this policy or the protocol set forth in this Settlement Agreement shall be disciplined in accordance with CITY and/or CITY Police Department procedures. This policy statement and the law enforcement protocol set forth below shall be made a part of the

  
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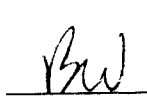
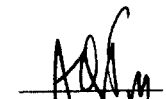
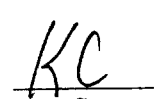
Departmental Order referenced above. Additionally, it shall be read by all other CITY employees with responsibilities regarding homeless people within 30 days of its issuance.

## VII. Law Enforcement Protocol

10. Definition of "Homeless Person". An individual is considered a "homeless person" if he or she "lacks a fixed, regular, and adequate night-time residence and has a primary night-time residency that is: (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations; (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term 'homeless person' does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a state law." 42 U.S.C. §11301, et seq. (1994). An officer is allowed to make reasonable inquiry to make this determination.

11. Definition of "Available Shelter". An "available shelter" means a shelter, with a bed at no cost to the homeless person, within the territorial boundaries of the CITY or within one mile thereof, that treats homeless persons with dignity and respect, imposes no religious requirements, and does not impose involuntary substance abuse or mental health treatment.

12. Definition of "Public Property". "Public Property" includes all property owned by any governmental entity (federal, state or local). "Public Property" shall not include property which has become subject to a leasehold interest, management agreement or other possessory interest of a nongovernmental lessee, licensee or manager, which is operated as a private business. A public park shall always be considered public property within the meaning of

  
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this Settlement Agreement.


12a. **Definition of "Exempt Public Property.** The following are "exempt public properties": (1) City of Miami, City Hall, 3200 Pan American Drive; (2) Miami Riverside Center, 444 S.W. 2<sup>nd</sup> Avenue; (3) City of Miami Fire Stations; (4) City of Miami Police Stations; and (5) City of Miami NET (Neighborhood Enhancement Team) Offices.


13. **Purpose.** It is agreed that a specified protocol is necessary to guide Miami police officers in their interactions and contacts with homeless persons. The protocol is a prescribed response when the police observe specified conduct or activity.


14. **Law Enforcement Protocol:** The City hereby adopts a protocol to further protect the rights of homeless persons, by limiting the circumstances under which arrests can be made, including the handling of their personal property:

**A. Homeless Person Observed Not Engaging in Any Criminal Conduct:**

There can be no arrest or detention. A law enforcement officer, social worker, or CITY outreach worker may approach the homeless person and advise him or her of shelter, services, or assistance which are then currently available. When the contact with the homeless person has been initiated by a "citizen's complaint," the law enforcement officer may, whenever appropriate, call for the assistance of an outreach worker, who, if available, may begin the process of engaging the homeless person in a dialogue which is intended to advise the homeless person of shelter, services or assistance that is/are available. **Required Records:** (1) If such an approach and advice concerning shelter, services, or assistance occurs by a law enforcement officer, the law enforcement officer shall complete a Field Information Card.

  
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**Records Filing:** A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

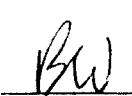
**B. Homeless Person Reasonably Believed to be Mentally Ill:**


Where a homeless person meets the criteria for involuntary examination under Florida Law (currently section 394.463, F.S.), "Baker Act," a law enforcement officer may, in his or her discretion, take the homeless person to a receiving facility for involuntary examination. **Required Records:** If the homeless person is taken to a receiving facility for involuntary examination, a copy of the forms required by section 394.463 (hereinafter "Baker Act Forms"), shall be filed with the Mental Health Crisis Center at Jackson Memorial Hospital and an Incident Report shall be completed. **Records Filing:** A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

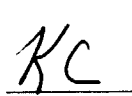
**C. Homeless Person Observed Violating a "Life Sustaining Conduct"**

**Misdemeanor:**

1. "Life sustaining conduct" misdemeanors are those which a homeless individual commits by the mere fact that he or she is without shelter, and must conduct life sustaining activities, such as eating, sleeping, sitting, congregating, or walking in public.
2. If the homeless person described above is observed committing one of the below listed "life sustaining conduct" misdemeanors, the law enforcement officer may warn the homeless person to stop the unlawful conduct. If there is no "available shelter," no warning shall be given. If there is an "available shelter," the law enforcement officer may advise the homeless person of its availability. If there is an "available shelter," and the shelter has been

  
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offered to the homeless person, and that person accepts this assistance, no arrest shall take place and arrangements shall be made to transport the homeless person to the shelter. Only if there is an "available shelter" and the homeless person refuses to accept the shelter, may the law enforcement officer arrest the homeless person for a "life sustaining conduct" misdemeanor.

**Required Records:** (1) If a homeless person is transported to an "available shelter," the law enforcement officer shall complete a Field Information Card; (2) If an arrest is made, an Arrest Affidavit shall be completed. **Records Filing:** A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

3. The "life sustaining conduct" misdemeanors referenced above are as follows:

- a. Being in park after hours. Current Provisions:, §§38-3 & 1-13, City of Miami Code ("CMC"); §162.22, F.S. (1994);
- b. Public nudity where necessary to carry on the daily necessities of life, such as bathing or responding to a call of nature. Current Provisions: §800.03. F.S. (1994), §37-1, 38-62, CMC.
- c. Fires in parks. Current Provisions: §38-53 & 1-13, CMC; §162.22, F.S. (1994);
- d. Obstructing passage on sidewalks. Obstructing a street, road, or highway shall not be construed to be a "life sustaining conduct" misdemeanor within the meaning of this protocol. Current Provisions: §§54-1 to 54-3, 37-3, CMC; §316.2045, F.S. (1994).

  
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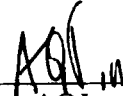
  
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- e. Vehicles, living or sleeping in. Current Provision: §37-4, CMC;
- f. Loitering in Restrooms. Current Provision: §38-68, CMC;
- g. Littering. Current Provisions: §403.314, Fla. Stat.; §22-6, 38-17, 38-63 CMC; and
- h. Camping in parks. Current Provision: §38-71, CMC;
- i. Use of facilities for other than intended purpose (e.g., sleeping on park bench). Current Provisions: §38-54, CMC;
- j. Temporary structures in park. Current Provisions: §38-52, CMC;
- k. Trespass on “public property” other than structure or conveyance. Current Provision: §810.09(1), Fla. Stat. Trespass on private property or an “exempt public property” is not a “life sustaining conduct” misdemeanor within the meaning of this protocol, and such violation should always be treated either as specified under paragraph D or E below. A homeless persons’ presence in the interior of an “exempt public property” is not a trespass within the meaning of this paragraph where the homeless person’s activities are reasonably related to the governmental business activities normally performed within these physical structures.

4. Nothing in this paragraph discussing “life sustaining conduct” misdemeanors shall prevent an immediate arrest under §800.04, F.S., entitled, “Lewd, lascivious,

  
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or indecent assault or act upon or in presence of child,” if a law enforcement officer has probable cause to make such an arrest.


**D. Homeless Person Observed Violating a Misdemeanor (which is not classified above as “Life Sustaining Conduct”):**

1. The “non-life sustaining conduct” misdemeanors are those which a homeless individual commits, but are not associated with “life sustaining activities,” such as eating, sleeping, sitting, congregating, or walking in public.

2. If the homeless person described above is observed violating a misdemeanor (which is not classified in this Protocol as “life sustaining conduct”), the law enforcement officer may warn the homeless person to stop the unlawful conduct, or, if the officer deems it appropriate, the officer may detain or arrest the homeless person. A law enforcement officer may, in his or her discretion, approach the homeless person and advise him or her of shelter, services or assistance which is then currently available. If the law enforcement officer deems it appropriate, he or she may also offer to call an outreach worker to the scene so that the homeless person can be transported to an “available shelter” that is appropriate for the homeless person’s needs at that time. **Records required:** (1) If a homeless person is transported to an available shelter, the law enforcement officer shall complete a Field Information Card; (2) If an arrest is made, an Arrest Affidavit shall be completed; (3) If the law enforcement officer warns the homeless person to stop the unlawful conduct, but no arrest is made, then the law enforcement officer shall complete a Field Information Card; (4) If an approach and advice concerning shelter, services or assistance occurs by a law enforcement officer, or if an outreach worker is called, the

  
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law enforcement officer shall complete a Field Information Card. **Records Filing:** A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

**E. Homeless Person Committing Felony Offense:**

If a law enforcement officer has probable cause to believe that a homeless person is committing, or has committed, a felony, the law enforcement officer may detain or arrest the homeless person. **Required Records:** If an arrest is made, an Arrest Affidavit shall be completed. **Records Filing:** A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

**F. Disposition of Personal Property Belonging to a Homeless Person who is Arrested.**

1. The CITY shall respect the personal property of all homeless people. The Miami Police Department (and all other Departments including but not limited to Parks and Recreation and Solid Waste) shall follow their own internal procedures for taking custody of personal property. In no event shall any city official or worker destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e., bedding or clothing and other belongings organized or packaged together in a way indicating it has not been abandoned), except as permissible by law and in accordance with the department's operating procedure, or if the property is contaminated or otherwise poses a health hazard to CITY workers or to members of the public. Notwithstanding any language in this Settlement Agreement to the contrary, the CITY is not responsible for taking custody of mattresses.

  
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**SETTLEMENT AGREEMENT  
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2. The disposition of personal property shall never prevent a law enforcement officer from effectuating an arrest authorized under the previous sections of this protocol. However, the following safeguards shall be undertaken by the arresting officer or any other CITY agent or official to preserve the property of a homeless person, to the extent feasible:


a. The arresting officer shall always attempt to secure personal items such as identification, medicines and eyeglasses and other small items of importance identified by the arrestee, which are not large or bulky, in accordance with the police department's existing procedures;

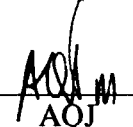
b. The arresting officer shall ensure that large or bulky items (which are not contaminated or otherwise pose a health hazard to CITY officers or workers or to members of the public) are not abandoned at the point of arrest, but rather secured by an outreach worker and maintained in accordance with existing outreach procedures, or, if an outreach worker is unavailable, secured by the arresting officer until an outreach worker becomes available to assume its maintenance in accordance with existing outreach procedures.


**VIII. Record Generation/Maintenance/Access**

15. The CITY shall, within 30 days of the execution of this Settlement Agreement, adopt a procedure for monitoring and accounting for its police officers' encounters with the homeless persons. This procedure shall include the following:

(a). generating form records of all City of Miami police arrests and detentions

  
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of homeless persons, and either entering them into a computer database or creating a paper data base;

(b). generating similar form records of all City of Miami police encounters with homeless persons as described in the above protocol and either entering them into a computer database or creating a paper data base. This Settlement Agreement shall not create any obligation on the part of a homeless person to produce any information to a law enforcement officer that would not otherwise be required of any other person.




(c). The records and statistics such as the number of arrests, detentions, and encounters which result in a warning or a referral; the nature of the underlying conduct; the ordinance or statute which formed the basis of the arrest, detention, or warning; and the number of actual referrals to homeless programs, if generated by the CITY, shall be provided to the members of the "Advisory Committee" (set forth below) as requested to monitor and ensure compliance with this Settlement Agreement."

(d). Within the limitations of the Florida Public Records Act, Chapter 119, Fla. Stat., access to other records, documents, and information relevant to this Settlement Agreement shall be readily available.

(e). The CITY shall preserve all existing arrest records relevant to class members making claims under the Compensatory Damages provisions of this Settlement Agreement for such period of time as is necessary to accomplish that goal.

**IX. Advisory Committee**

16. To ensure the CITY's compliance with this Settlement Agreement, there shall be

  
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an Advisory Committee (hereinafter the "Committee"). The Committee shall consist of one person selected by the CITY, one person selected by the American Civil Liberties Union (hereinafter the "ACLU"), and a third person selected by the other two. The third person shall be someone with experience or expertise concerning homelessness in South Florida, but that individual shall not have been aligned with, or have testified on behalf of either party at any time during the pendency of this litigation. If any person selected refuses to serve, the selecting party or Advisory Committee members (whoever originally selected the member) shall have thirty (30) days to select another individual. If any member of the Committee resigns, the entity responsible for selecting the resigning member shall have ninety (90) days to select a replacement.

17. The members of the Committee shall serve as volunteers, without compensation, and strictly as a public service. They shall make every good faith effort to meet at the designated times and to carry out all responsibilities under this Settlement Agreement. The CITY shall provide reasonable copying and secretarial services (consistent with the functions of the advisory committee as set forth in this Settlement Agreement) and a meeting room.

18. The Committee shall remain in existence for a period of three (3) years following the date of the Court's approval of this Settlement Agreement, renewable for one three year period upon a majority vote of the Committee.

19. The responsibility of the Committee will be to monitor all police contacts with homeless persons, and other matters contemplated by this Settlement Agreement. These responsibilities shall be accomplished by interviewing homeless persons on the streets and in shelters, patrolling with police officers, accompanying CITY outreach workers in areas with high

  
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concentrations of homeless persons, observing the police training, reviewing the training curriculum, and reviewing information on file with the appropriate unit within the Miami Police Department, the City of Miami, regarding matters set forth in this Settlement Agreement.

20. The Advisory Committee shall also receive and investigate complaints by homeless persons who claim to have been aggrieved by the CITY's non-compliance with this Settlement Agreement and shall take appropriate responsive action, which may include, advising the aggrieved person and appropriate City officials of the validity of the claim, and making recommendations to the parties to prevent additional, similar grievances,

21. The Advisory Committee shall meet quarterly or more frequently as necessary to conduct its business, at a mutually acceptable date and time to the members. Three members of the Committee shall constitute a quorum. All decisions or other action of the Committee shall require a majority vote of the members. The meetings of the Committee shall be open only to the CITY and the ACLU. The Committee's business shall be kept confidential by the Committee members, who shall not discuss the Committee's business with anyone (including any members of the Press) but themselves or with the CITY and the ACLU, or other persons providing assistance to the Committee.

Additionally, the Committee shall issue a report every six months setting forth its activities for that reporting period. Every third year the Committee shall issue a summary report on its activities for that period and the CITY's compliance with this Settlement Agreement, and report to the parties on the need for its continuing existence.

22. If the Committee deems it appropriate, the Committee may advise the CITY Police

  
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Department regarding the law enforcement protocol and police training set forth in this Settlement Agreement and may recommend to the parties any proposed changes.

22a. The Committee shall not have the authority to seek Court intervention into any matter concerned with this Settlement Agreement, and its recommendations shall not be binding upon the parties.


**X. Compensatory Damages**

23. As compensatory damages the CITY agrees to:

a. Create a Compensation Fund, which will be used to compensate members of the class (as amended, altered and modified in this Settlement Agreement) who between December 23, 1984, and the effective date of this Settlement Agreement, suffered the types or kinds of injuries alleged in the Plaintiffs' Complaint (as amended) in this action. Irrespective of the number of arrests or the number of times personal property may have been destroyed, a single individual member of the class may only participate in the compensation fund once, e.g., only one claim shall be allowed per person. The Compensation Fund shall be administered as follows:

(1). *Appointment of Magistrate.* A U.S. Magistrate shall be appointed by the Court to rule upon and determine objections to claims made pursuant to the procedure set forth herein.

(2). *Distribution of "Proof of Claim Forms."* Proof of Claim Forms may be obtained in person at the front reception desk of the CITY OF MIAMI Police Department, Central Station, 400 N.W. 2<sup>nd</sup> Avenue, Miami., Florida, and from all CITY NET (Neighborhood Enhancement Team) Offices, the City of Miami Office of Homeless Programs,

  
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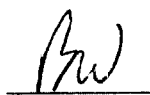
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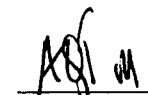
and the ACLU's Miami Office. Proof of Claim Forms shall be available by mail or telephone, or in person. They shall be made available in English, Spanish, and Creole. The Proof of Claim Forms shall be available as soon as practicable after the Settlement Agreement is approved, and shall be available during the entire 90 day period established by the Magistrate for the filing of claims.

(3). *Contents of Proof of Claim Form.* Class members who wish to file a claim ("claimants") shall be required to file Proof of Claim Forms (attached) providing details about their claim. The Proof of Claim Form (with Instructions) is attached as Exhibit "B" (English version). It may be revised if necessary to reflect the payment form and mechanism [See paragraphs 23(a)(4) and 23(a)(6)].

(4). *Filing of Proof of Claim Forms.*

(i). After selection of the Magistrate, the Magistrate will enter an order establishing the 90 day period during which claims may be filed with the Clerk of the Court for the Southern District of Florida, or in some other manner designated by the U.S. District Court. The 90 day period shall not be set to begin running until Proof of Claims Forms are available for distribution as specified in paragraph 23(a)(2) above. To be considered, all claims must be filed on a Proof of Claim Form. Both parties shall have access to the Proof of Claim Forms on file and shall have the right to make copies at their own expense. At the close of the 90 day period, the Magistrate shall notify the parties of the number of claims filed during the 90 day period and make them available for photocopying at their own expense. The Court or the Clerk shall release the claims forms (and all supporting documentation) to a third party

  
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photocopying service, e.g., Black's Photocopy Service, for reproduction on behalf of either the ACLU or the CITY.

(ii). Prior to filing, upon presentation of a Proof of Claim Form to the public window of the Records Unit of the City of Miami Police Department, Central Station, including the name and date of birth of the claimant, the Records Unit shall provide certified copies of all arrests records (from December 23, 1984 through the effective date of this Settlement Agreement) on file with the City of Miami Police Department concerning the claimant to the claimant at no charge. These records shall also be made available at no charge through request by mail with an accompanying copy of the Proof of Claim Form. In addition, at the same time and place, and under the same conditions, the CITY shall make available to homeless persons for free the services of a notary public for the purpose of notarizing the signature of the claimant.

(iii). All claims against the Compensation Fund must be filed within the 90 day period established by the Magistrate, or be forever barred.


(iv). Each Proof of Claim Form filed shall be verified under penalty of perjury by the claimant (or, where applicable, the claimant's representative).

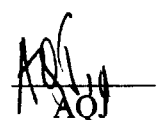
(5). *Determination of Claims*


(i). Objections:

(a) The CITY may file an objection to any claim only as follows:

[1]. The claimant or the injured person is not who he or she claims to be.

  
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- [2]. The claim was not timely filed;
- [3]. The claim was not signed, or verified;
- [4]. The claim was withdrawn by the claimant;
- [5]. The claimant has filed more than one (1)

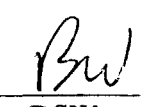
claim [see paragraph 23(a)];


[6]. The claimant's proof of membership in the class is insufficient; and

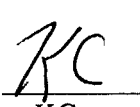
[7]. The claimant's proof of injury at the hands of a CITY official or employee is insufficient; and

[8]. The claimant's proof that he suffered an injury of the type and kind alleged in Plaintiffs' Second Amended Complaint (docketed September 8, 1989) in this action is insufficient.

(ii). The CITY shall have 20 days (as computed by the Federal Rules of Civil Procedure) from the date the parties are notified by the Magistrate at the end of the 90 day period established for the filing of Proof of Claim Form, to present objections to any claim filed with the Magistrate. The CITY shall mail a copy of the objection to the ACLU and to the claimant at the mailing address given on the Proof of Claim Form. At the close of the 20 day period, the Magistrate and shall make the objections available for inspection and/or photocopying at the ACLU's own expense. The Court or the Clerk shall release the objections (and all supporting documentation) to a third party photocopying service, e.g., Black's Photocopy Service, for reproduction on behalf of the ACLU.

  
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(iii). The Magistrate shall determine the validity of all claims upon the written record upon such terms and under such conditions as the Magistrate deems just.

(iv). The Magistrate shall accept the validity of any claim as to which no timely objection has been filed by the CITY. Upon the Magistrate's acceptance of a claim as to which no objection has been filed, the Magistrate shall so notify the parties and the claimant (or his representative, if any). The notice shall contain the following information:

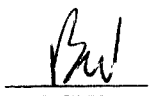
(a). The Magistrate's acceptance of the claim because of a lack of objection;

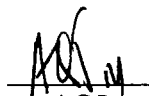
(b). the entitlement of the claimant to an award (as set out below); and


(c). Where and how the award can be collected.

(v). In the case of a timely objection to a claim, the determination of the validity of the claim shall be made by the Magistrate.

(a). The Magistrate shall do so on the basis of the written record unless he or she determines that an interview or discussion with the claimant (and the claimant's representative, if any) is necessary. If the Magistrate determines that such an interview or discussion is necessary, the Magistrate shall set it at a time, date, and place that is feasible for the claimant, and, if at all possible, confirm its feasibility with the claimant. For claimants who reside outside Dade or who are otherwise unable to be personally present, the Magistrate shall have the discretion to conduct an interview by telephone. The Magistrate shall notify the parties to this Consent Decree of the date, time, and place of the meeting or interview,

  
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and the parties shall have the right to be present and informally present arguments and evidence.

(b). In determining whether to accept a claim to which a timely objection has been filed, the Magistrate should seek to ensure that compensation is reserved for claimants rightfully entitled to receive it, taking into account that documentation of claims should be no more burdensome than necessary to implement the settlement and that the amount and specificity of evidence that might be needed to establish injury at trial is not required.

(vi). If the Magistrate accepts a claim as valid, notwithstanding the CITY's objection, then the Magistrate shall so notify the parties and the claimant (or his representative, if any). The CITY may move for reconsideration within 15 days. The notice shall contain the following information:

(a). The Magistrate's acceptance of the claim, and the reason for overruling the objection;

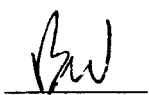
(b). the entitlement of the claimant to an award (as set out below); and

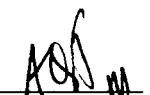
(c). Where and how the award can be collected.


(vii). If the Magistrate rejects a claim, then the Magistrate shall so notify the parties and the claimant (or his or her representative, if any). The claimant may move for reconsideration within 15 days. The notice shall contain the following information:

(a). The Magistrate's rejection of the claim and the reasons for rejecting it; and

(b). The right of the claimant to move for

  
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reconsideration within 15 days. This notice shall be displayed prominently in bold typeface, and shall also include a notice that the claimant may contact the ACLU immediately for assistance. The notice shall have the telephone number for the ACLU.

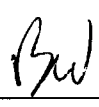
(viii). The decisions of the Magistrate shall be final, with no right of appeal or reconsideration other than provided for hereinabove.

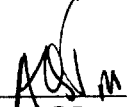
(6) *Awards:*

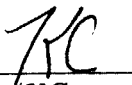
(i). If the CITY is able to devise and implement a "debit card" program by the date this Settlement Agreement is approved, then each successful claimant, shall be awarded a debit card in the amount of \$1,500.00. Such debit cards shall be accessible by a nationally recognized card such as Visa or Mastercard, widely accepted by merchants, and will be set up to be used for purchases but not cash withdrawals or advances. Administrative costs of setting up and administering the accounts shall be born by the CITY.

(ii). If the CITY is not able to devise and implement a "debit card" program by the date of this Settlement Agreement is approved, then each successful claimant, shall be awarded damages in the form of \$1,250.00 in cash or \$1,500.00 in non-cash awards, as provided herein.

(iii). *Cash Payments.* Successful claimants who are no longer homeless shall qualify for a lump-sum cash payment of \$1,250.00. Whether a claimant is no longer homeless shall be determined by the Magistrate pursuant to the same procedures for the determination of claims. A successful claimant who was homeless at the time the Proof of Claim Form was filed, but is no longer homeless by the time awards are distributed, may execute a Form

  
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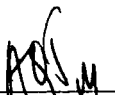
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(Exhibit "C") so indicating. The CITY shall have 15 days to object to the truthfulness of the information in that Form, in which case the Magistrate shall make the final determination whether the successful claimant is no longer homeless. Cash payments shall be made by check payable to the claimant. Claimants who qualify for a lump-sum cash payment of \$1,250.00 may choose instead to participate in the non-cash program described below.

(iv). *Non-cash Program.* Successful claimants who do not qualify for cash payments (or who so qualify but choose instead to participate in the non-cash program) shall participate in a non-cash program as described herein. Such claimants shall be given vouchers for food, clothing, housing, or travel, or may have third party payments made on their behalf, in the amount of \$1,500.00 per participating claimant. Administrative costs of setting up and administering the voucher and third party payments shall be born by the CITY. However, if a non-cash program complying with all the requirements set out in paragraph 23(a)(6)(iv)(a-e) below cannot be devised by the date the Proof of Claims Forms are made available to claimants, then all successful claimants shall receive cash payments of \$1,500.00 each. If a non-cash program complying with all such requirements except for that set out in paragraph 23(a)(6)(iv)(d) below is devised by the date the Proof of Claims Forms are made available to claimants, then successful claimants who are homeless and reside outside Miami shall receive cash payments of \$1,500.00 each.

(a). In establishing the voucher program, the CITY shall provide vouchers or certificates for food or clothing at easily accessible stores such as but not limited to Publix, Winn-Dixie, K-Mart, Burdines, or similar establishments who agree to

  
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participate. The program shall also provide for vouchers or vendor payments for claimants to use at apartments, residential hotels, SRO dwellings, or similar establishments. The CITY shall make a good faith effort to persuade clothing, food, and department stores and housing providers to participate in the voucher program.

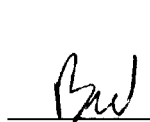

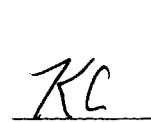
(b). The voucher program shall be designed so that the claimant is not narrowly limited by store or location. The vouchers shall be valid at stores, apartments, etc., within the territorial boundaries of the City of Miami, and at such additional locations in the Dade County Metropolitan Area as are appropriate.

(c). Claimants may take part of their voucher entitlement in the form of third party payments by the CITY on behalf of the claimant. Such payments shall be made only for a debt owed by the claimant himself or herself or for a transaction in which the claimant is the purchaser of goods or services. Third party payments shall only be made for legal debts and purchases, to establish merchants, financial institutions, and other established providers of goods and services (e.g., landlords).

(d). The voucher and third-party payment program shall be designed so that it satisfies the needs of successful claimants who do not qualify for cash and who live outside Miami, in a fashion comparable to those who live in Miami.

(e). Claimants shall be entitled to choose the mix of types of vouchers (food, clothing, housing travel) or third party payments they prefer.

(7). *Payment of Awards/Releases.* The CITY's Office of Homeless Programs (OHP) shall distribute the cash and non-cash awards. The vouchers shall be distributed

  
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in such a manner as to discourage their being bartered, sold, or otherwise used by anyone but the claimant. The distribution of cash awards shall begin immediately after all claims have been so determined (including the expiration of the time for reconsideration). The non-cash program shall begin thirty days after all claims have been finally determined including the expiration of the time for reconsideration). In no event shall cash or non-cash awards be distributed earlier than January 5, 1998. Prior to distribution of any cash or non-cash award, the claimant shall execute a full release in the form attached as Exhibit "D" of the CITY, including all CITY agents, officials and employees, for all claims between December 23, 1984, and the effective date of this Settlement Agreement for the types and kinds of injuries alleged in Plaintiffs' Second Amended Complaint (docketed September 8, 1989) in this action. This release does not cover injuries suffered which were outside the scope of Plaintiffs' Second Amended Complaint (docketed September 8, 1989). The release may be revised if necessary to reflect the payment form and mechanism [See paragraphs 23(a)(4) and 23(a)(6)].

(8). *Amount of Fund.* In no event shall the City's aggregate responsibility under the Compensation Fund for all claims exceed \$600,000. If the cash and non-cash value of all valid claims exceeds \$600,000, claimants with valid claims shall be awarded a *pro rata* share of the \$600,000 compensation fund, notwithstanding the specific amounts specified above.

b. If the total value of all valid claims is less than \$600,000, the City will create a "Start Off Fund." The total amount of the Start Off Fund will be the difference between \$600,000 and the total value of all claims awarded from the Compensation Fund. Payments from

  
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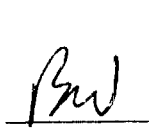
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he Start Off Fund will be made in the form of vendor payments not to exceed \$1,000.00 per person. They will be available to any homeless person or homeless family in Miami to help achieve permanent housing (e.g., to pay for rent, security and utility deposits, clothing furniture, or other necessities of life). The Advisory Committee will determine the guidelines for payment from the Start Off Fund. The actual amount to be received by any given person or family group shall be determined by the City's Office of Homeless Persons, following such guidelines. Funding for the Start Off Fund shall be appropriated thirty days following the disposition of all claims by the Magistrate, including any requests for reconsideration, but not earlier than January 5, 1998. The funds from the Start-Off Fund shall be paid out within two years of the effective date of this Settlement Agreement. The CITY's Department of Internal Audits shall perform an audit of the Start-Off Fund program at its conclusion, and plaintiffs and their counsel shall be entitled to a copy of that audit. In addition, the books and records of the Start-Off Fund program will be available to plaintiffs and their counsel at any time during regular government business hours.

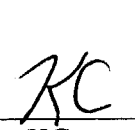
c. The parties agree that the CITY may establish a trust fund for the purpose of receiving donations from the public or private sector of funds, goods and/or services to satisfy, either in whole or in part, the CITY's \$600,000 obligation under this Settlement Agreement.

**IX. Attorney Fees**

25. The underlying litigation has spanned nearly ten years, during which there were two trials and numerous other hearings before the district court, two appeals including two oral arguments before the Court of Appeals for the Eleventh Circuit, as well as extensive court-ordered negotiations and mediation between the parties spanning eighteen months, all requiring

  
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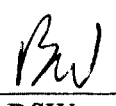
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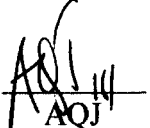
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substantial commitments of time and professional services on the part of more than ten attorneys for the plaintiffs over this period of time. In light of the foregoing, and considering similar payments of attorneys fees to plaintiffs' counsel in other civil rights cases, the City shall pay to the Plaintiffs' attorneys the sum of \$900,000 as and for attorneys fees and costs, without any admission of liability to pay such fees, but rather, as a part of the comprehensive settlement to be adopted through the implementation of this Settlement Agreement. Additionally, said payment is made to conclude all claims for attorneys fees in the underlying litigation, including pending appeals, and in regard to all other matters connected with this Settlement Agreement, except enforcement proceedings, should such become necessary after non-binding mediation as provided for below.

The parties agree that the \$900,000.00 (without interest) shall be paid in three equal installments of \$300,000.00 each over a period of three fiscal years following the effective date of this Settlement Agreement. The CITY's fiscal year runs from October 1 through September 30. The first installment shall be made in the current fiscal year within thirty days of the effective date of this Settlement Agreement. The second installment shall be paid within thirty (30) days following the commencement of the next fiscal year, i.e., October 1st, 1998. The third and final installment shall be made within thirty (30) days following the commencement of the following fiscal year, i.e., October 1<sup>st</sup> 1999. If any of these installments are not made on time in their entirety, the entire installment due, and any further attorneys fees necessary for collection, shall be awarded by the District Court.

**X. Enforcement/Mediation**

  
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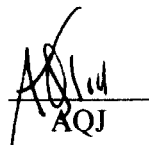
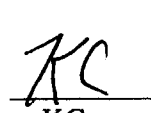
**SETTLEMENT AGREEMENT**  
**CASE NO.: 88-2406-CIV-ATKINS**

25a. Prior to any party seeking court enforcement against any other party to this Settlement Agreement, the parties shall attempt to informally mediate a dispute in a non-binding mediation. During the existence of the Advisory Committee, the Advisory Committee shall appoint one of its members to act as the mediator. After the expiration of the Advisory Committee, unless the parties can agree upon a mediator, the aggrieved party shall notify the Court for the need for the appointment of a mediator, and the Court shall appoint a mediator from its list of approved mediators, the cost of which shall be borne by the CITY. Mediation shall take place within ten (10) days of a request made by either party to the other party. This requirement to mediate prior to seeking court enforcement shall not prevent a party from seeking immediate court enforcement if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss or damage will result to the aggrieved party before the aggrieved party and the other party can conduct mediation as contemplated in this paragraph.

**XII. Class Approval/Notice to Class Members**

26. The class certified in *Pottinger v. City of Miami*, 720 F.Supp. 955, 960 (S.D. Fla. 1989), shall be amended, altered and modified under Rule 23(c)(1), Fed. R. Civ. Proc., to consist of all homeless persons who reside, have resided, or will reside on the streets, sidewalks, parks, and in other public places within the geographical boundaries of the City of Miami, who have been, expect to be, or will be in contact with members of the City of Miami Police Department.

27. Notice to the class of the amendment, alteration and modification of the class, and of this proposed Settlement Agreement, pursuant to Rule 23(e), Fed. R. Civ. Proc., shall be given simultaneously by publication in *The Miami Herald*, *El Nuevo Herald*, *Miami Times*, and *New*

  
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**SETTLEMENT AGREEMENT**  
**CASE NO.: 88-2406-CIV-ATKINS**

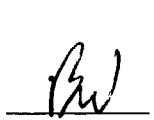
*Times*, on three different days, including one weekend day, of three consecutive weeks, which shall not be less than a 1/3 page in the Local (Locales) section of each paper, to maximize the chance of actual notice to the class members. The costs of such notices shall be borne by the CITY. The notice shall advise class members of the status of this case, and describe, generally, the proposed settlement and monetary relief available to class members, and how to obtain it, including where Proof of Claims Forms will be available after approval of the Settlement Agreement. The notice shall be subject to court approval. Class members shall have 30 days following the final notice within which to file any written objections to the Settlement Agreement. The court shall convene a hearing at the convenience of its calendar, but at least 30 days thereafter to consider any such objections after which the court shall approve or disapprove the Settlement Agreement. The notice shall state the date, time, and location of this hearing. The Court shall set the date for the hearing to consider objections at the time it approves the content of the notice.

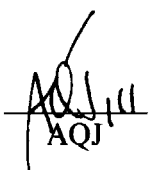
**XIII. Oversight Committee Approval**


28. This Settlement Agreement shall be of no force or effect, nor submitted to the Court for approval, until it is approved by the Oversight Committee, appointed by the Governor of the State of Florida to assist the CITY overcome its current fiscal crisis. Oversight Committee Approval shall not be sought until after the parties execute this agreement.

**XIV. Court Approval**

29. This Settlement Agreement shall not be effective until approved by the Court, after the hearing described in Section XII above, which, upon approval, shall become the Settlement

  
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**SETTLEMENT AGREEMENT**  
**CASE NO.: 88-2406-CIV-ATKINS**

Agreement between the parties. The Court shall retain jurisdiction to enforce the terms hereof.

**XV. Modification**

30. This Settlement Agreement may be modified by written agreement of the parties, or upon a showing of a significant change of circumstances warranting revision of the Agreement in a way suitably tailored to the change of circumstances, but in either event, only after approval by the Court.

**XVI. Integration Clause**

31. This Settlement Agreement, including the attached exhibits as listed below, contains the entire agreement of the parties, and supersedes all previous oral or written representations or agreements. This Settlement Agreement shall not be supplemented by parol evidence.

Exhibit A: Departmental Order

Exhibit B: Proof of Claim Form, with Instructions (English Version)

Exhibit C: Verified Statement regarding Current Status

Exhibit D: Release

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STEPHEN J. SCHNABLY  
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Cooperating Attorneys for the Greater  
Miami Chapter of the American Civil  
Liberties Union  
Southwest Third Avenue, 4th Fl.  
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By: Benjamin Waxman  
BENJAMIN S. WAXMAN  
Fla. Bar No. 403237

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A. QUINN JONES, III, City Attorney  
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Attorney for Defendant  
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Tel: (305) 416-1800  
Fax: (305) 416-1801


By: A. Quinn Jones, III  
A. QUINN JONES, III  
Fla. Bar No.


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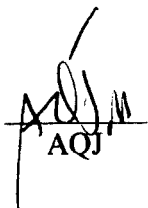



**SETTLEMENT AGREEMENT  
CASE NO.: 88-2406-CIV-ATKINS**

KENDALL COFFEY, ESQ.  
Coffey, Diaz & O'Naghten  
1100 Grand Bay Plaza, 2665 South Bayshore Drive  
Coconut Grove, FL 33133  
(305) 285-0800

By:   
KENDALL COFFEY  
Fla. Bar No. 259861

  
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CHAPTER 9

HOMELESS

Section

- 9.1 Policy
- 9.2 Organization
- 9.3 Responsibility
- 9.4 Mission
- 9.5 Definitions
- 9.6 Procedures
- 9.7 Property

9.1 POLICY: It is the policy of the City of Miami Police Department to ensure that personnel are sensitive to the needs and rights of our Homeless population, as well as knowledgeable of the department's arrest policies concerning such persons.

9.2 ORGANIZATION: The City of Miami has a policy that we shall not arrest visibly homeless persons who live in public for performing acts, criminalized as misdemeanors, such as sleeping, eating, lying down, or sitting in public, when there is no available shelter. It is not a crime to be homeless. This policy should not be construed as protecting persons (whether homeless or not) from arrest for engaging in any other type of criminal activity.

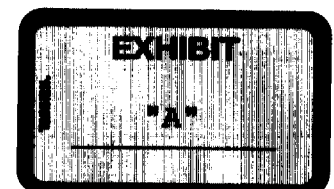
9.3 RESPONSIBILITY: It is the responsibility of all City of Miami Officers whether working in an on-duty or off-duty capacity to abide by this Departmental Order.

9.4 MISSION STATEMENT: We must continue to vigorously do our job and enforce the laws which were enacted to ensure a safer community, while extending compassion for homeless persons.

9.5 DEFINITIONS:

9.5.1.1 A "homeless person" An individual is considered a "homeless person" if he or she "lacks a fixed, regular, and adequate night-time residence and has a primary night-time residency that is: (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations; (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for

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DEPARTMENTAL ORDER 11  
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human beings. The term 'homeless person' does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a state law." An officer is allowed to make reasonable inquiry to make this determination.

9.5.1.2 An "available shelter" means a shelter, with a bed at no cost to the homeless person, within the territorial boundaries of the CITY or within one mile thereof, that treats homeless persons with dignity and respect, imposes no religious requirements, and does not impose involuntary substance abuse or mental health treatment.

9.5.1.3 "Public Property": "Public Property" includes all property owned by any governmental entity (federal, state or local). "Public Property" shall not include property which has become subject to a leasehold interest, management agreement or other possessory interest of a nongovernmental lessee, licensee or manager, which is operated as a private business. A public park shall always be public property within the meaning of this definition.


9.5.1.3.1 "Exempt Public Property": The following are "exempt public properties": (1) City of Miami, City Hall, 3200 Pan American Drive; (2) Miami Riverside Center, 444 S.W. 2<sup>nd</sup> Avenue; (3) City of Miami Fire Stations; (4) City of Miami Police Stations; and (5) City of Miami NET (Neighborhood Enhancement Team) Offices. A homeless persons' presence in the interior of an "exempt public property" is not a trespass within the meaning of 9.6.2.3.3 (11) where the homeless person's activities are reasonably related to the governmental business activities normally performed within these physical structures.

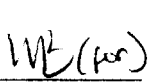
## 9.6 PROCEDURES

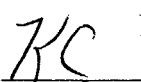
9.6.1 An officer always has the right to approach any individual, including a homeless person, to allay any suspicions an officer may have about the individual, and ascertain that no criminal activity is occurring.

9.6.2 At any time, and for any reason, a law enforcement officer may approach a homeless person, who has not been observed engaging in any criminal conduct, to advise him or her of shelters, services, or assistance which are currently available. The officer may also call for the assistance of an outreach worker. The homeless person may or may not accept the advice or referral, or he/she may even walk away from the area prior to the outreach worker arriving. The rationale is to proactively have an outreach worker address the homeless person with referrals. If such an approach and advice occurs by a law enforcement officer, that officer shall complete a Field Information Card with the facts of the incident, the referral and indicate at the top of the card "Homeless". A copy of which shall be filed with the Records Unit within the Miami Police Department.

9.6.2.1 A law enforcement officer may, in his or her discretion, when coming into contact

  
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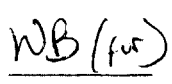
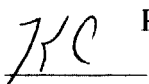
with a homeless person which he or she reasonably believes to be mentally ill, take the homeless person to a receiving facility for involuntary examination where the criteria for involuntary examination under section 394.463 F.S. (Baker Act) have been satisfied. If the homeless person is taken to such a receiving facility for involuntary examination, a copy of the "Baker Act Forms shall be filed with the Mental Health Crisis Center at Jackson Memorial Hospital. In addition, the officer shall complete an Incident Report with the facts of the incident and indicate at the top of the report "Homeless". A copy of which shall be filed with the Records Unit within the Miami Police Department.

9.6.2.2 If a homeless person is observed violating a "Life Sustaining Conduct" misdemeanor (as listed under 9.6.2.2.4), the law enforcement officer may exercise the following courses of conduct.

9.6.2.3 If an officer determines that an individual is a homeless person, and through his observation determines that a "Life Sustaining Conduct Misdemeanor" (as they are listed under 9.6.2.2.4) is occurring in his presence, he must first check to see if there is an "available shelter." The officer will contact the communications unit, who in turn will contact the Homeless Outreach Program at (305) 579-6835, to ascertain if there is an "available shelter." If there is an "available shelter," the officer will offer the shelter to the homeless person in lieu of being arrested. If the homeless person chooses shelter rather than arrest, an Outreach Team (if available) will respond to transport the homeless person to the shelter. If the Outreach Team is not available, the officer shall transport the homeless person to the shelter. If the homeless person is transported to a shelter, the officer will complete a Field Information Card with the facts of the incident and indicate at the top of the card "Homeless". A copy of which shall be filed with the Records Unit within the Miami Police Department.

9.6.2.3.1 If the officer has probable cause to arrest the homeless person for a "Life Sustaining Conduct Misdemeanor" (as they are listed under 9.6.2.2.4), there is an "available shelter," and the homeless person refuses the shelter, the officer may arrest the homeless person. The officer must document on the A form, beyond the probable cause for the arrest, the offer of shelter, the refusal by the homeless person to accept the "available shelter," the name of the shelter, and the word "Homeless" should be written at the top of the Arrest Affidavit. A copy of the Arrest Affidavit will be forwarded to the Miami Police Records Unit.

9.6.2.3.2 If the officer has probable cause to arrest the homeless person for a "Life Sustaining Conduct Misdemeanor" (as they are listed under 9.6.2.2.4), and there is no "available shelter," the officer shall not make an arrest nor take any other police action (warnings, etc.) The officer will complete a Field Information Card explaining the circumstances of the initial contact with the homeless person, the fact that there was no "available shelter," the fact that no arrest was made and the word "Homeless" should be written at the top of the card. A copy of the Field Information Card will be forwarded to




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the Miami Police Records Unit.

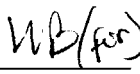
9.6.2.3.3 "Life Sustaining Conduct Misdemeanors" are the following:

1. Being in park after hours. Current Provisions (38-3 & 1-13, FS 162.22)
2. Public nudity where necessary to carry on the daily necessities of life, such as bathing or responding to a call of nature. Current Provisions (FS 800.03, 37-1, 38-62)
3. Fires in parks. Current Provisions (38-53, 1-13, FS 162.22)
4. Obstructing passage on sidewalks. Obstructing a street, road, or highway shall not be construed to be a "life sustaining conduct" misdemeanor within the meaning of this Departmental Order. Current Provisions (54-1 to 54-3, 37-3, FS 316.2045)
5. Vehicles, living or sleeping in. Current Provision (37-4)
6. Loitering in Restrooms. Current Provision (38-68)
7. Littering. Current Provisions (FSS 403.314, 22-6, 38-17, 38-63)
8. Camping in parks. Current Provision (38-71)
9. Use of facilities for other than intended purpose (e.g., sleeping on park bench). Current Provisions (38-54)
10. Temporary structures in park. Current Provision (38-52)
11. Trespass on "public property" other than structure or conveyance. Current Provision (FS 810.09(1)) Trespass on private property or in an "exempt public property" is not a "life sustaining conduct" misdemeanor within the meaning of this Departmental Order

9.6.2.3.4 Nothing in 9.6.2.3.3 listing the "Life Sustaining Conduct Misdemeanors" shall prevent an immediate arrest under 800.04 FS entitled "Lewd, lascivious, or indecent assault or act upon or in presence of a child," if the officer has probable cause to make such an arrest.

9.6.2.3.5 Homeless persons observed violating a misdemeanor, which is not classified above as a "Life Sustaining Conduct Misdemeanor." Under this category the existence of an "available shelter" would not dictate whether an arrest is effected. However, officers can still refer homeless persons to the Outreach Team. A referral to an appropriate shelter, rather than an arrest might be a better solution to minor misdemeanor arrests. The officer may warn the homeless person to stop the unlawful conduct, or, if the officer deems it appropriate, the officer may detain or arrest the homeless person. If the homeless person is arrested, the word "Homeless" should be printed on the top of the "A" form, a copy of which shall be filed with the Records Unit within the Miami Police Department. If the officer makes a decision not to make an arrest, and a referral is made, then the officer shall complete a Field Information Card with the facts of the incident, the referral, and indicate at the top "Homeless," a copy of which shall be filed with the Records Unit within the Miami Police Department.

  
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9.6.2.3.6 If an officer has probable cause to believe that a homeless person is committing, or has committed, a felony, our current arrest procedure stay the same. The law enforcement officer may detain or arrest the homeless person. The officer shall make the notation of "Homeless" on the top of the Arrest Affidavit, a copy of which shall be filed with the Records Unit within the Miami Police Department.

9.7 PROPERTY


9.7.1 The City shall respect the personal property of all homeless persons. Officers shall follow existing policies for taking custody of personal property. In no event shall any officer destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person unless it is contaminated or otherwise poses a health hazard to an officer or to members of the public. Officer are not responsible for taking custody of mattresses.

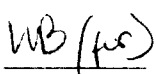
9.7.2 The disposition of personal property shall never prevent an officer from effectuating an arrest. However, the following safeguards shall be undertaken by the arresting officer to preserve the property of the homeless person, to the extent feasible:

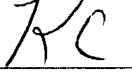
9.7.2.1 The arresting officer shall always attempt to secure personal items such as identification, medicines and eyeglasses and other small items of importance identified by the homeless person, which are not large or bulky, in accordance with the police department's existing procedures;

9.7.2.2 The arresting officer shall ensure that large or bulky items (which are not contaminated or otherwise pose a health hazard to the officer or to members of the public) are not abandoned at the point of arrest, but rather secured by an outreach worker and maintained in accordance with existing outreach procedures. If an outreach worker is unavailable, then it must be secured by the arresting officer until an outreach worker becomes available to assume its maintenance in accordance with existing outreach procedures.

9.7.3 In no event shall any officer destroy any personal property known to belong to a homeless person (i.e. clothing and other belongings organized or packaged together in a way indicating it has not been abandoned) except as permissible by law (in accordance with the department's operating procedures), or if the property is contaminated or otherwise poses a health hazard to officers or to members of the public.

  
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United States District Court for the Southern District of Florida

**PROOF OF CLAIM***Pottinger v. City of Miami*  
Case No. 88-2406-CIV-ATKINS

***This form must be filled out in full. Each item must be answered, unless it says "optional." Please print neatly in dark ink, or type. If you need more space, attach additional sheets with the claimant's name, address and date of birth on them.***

**Part I. Identifying Information**

1. Name of the claimant:

*Write your own name in Question 1 if you were the person who was arrested or had property destroyed, and you are filing this Form for yourself. If you are filing this Form for someone else who was arrested or had property destroyed, write that person's name here, not your own name.*

2. Birth date of the claimant:

\_\_\_\_/\_\_\_\_/\_\_\_\_  
month      date      year

*Write your own birth date in Question 2 if you were the person who was arrested or had property destroyed, and you are filing this Form for yourself. If you are filing this Form for someone else who was arrested or had property destroyed, write that person's birth date here, not your own birth date.*

3. What is your relationship to the claimant?

**A**  
**Self**

- ☐ I am the claimant (the person who was arrested or had property destroyed), and I am filing this Proof of Claim for myself.

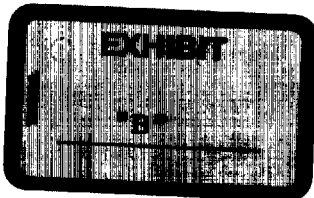
**B**  
**Other**

*If you are filing this Proof of Claim Form for someone else ...*

- Check the applicable boxes below
- Fill in your own name below
- Look for special instructions marked by *W* throughout the rest of the Form.

I am filing this Proof of Claim Form for someone who was arrested or had property destroyed, and is now dead, and:

- ☐ I am his or her next of kin.
- ☐ I am the person named in his or her will as the beneficiary.
- ☐ I am the person named in his or her will as the executor.
- ☐ I am filing this Proof of Claim Form for someone who was arrested or had property destroyed, and has been declared legally incompetent, and I am his or her legal guardian.
- ☐ Other (explain):



My name: \_\_\_\_\_

\_\_\_\_\_  
FIRST NAME      MIDDLE NAME      LAST NAME      SUFFIX  
(Jr., III, etc.)

*BSW*      *AQJ*      *KC*  
BSW      AQJ      KC



Pottinger v. City of Miami  
Case No. 88-2406-CIV-ATKINS (S.D. Fla.)

Proof of Claim Form  
Page 2 of 7

4. Mailing address: \_\_\_\_\_  
*If you do not have a permanent address, please put an address here where you can receive mail.*

Street or Post Office Box: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

5. I ☐ do have a telephone number where I can be reached.  
☐ do not

*If you do have a telephone number where you can be reached, then you must fill in the following information:*

Telephone number(s): \_\_\_\_\_ / \_\_\_\_\_  
Area code Telephone number Area code Telephone number

Times when I can be reached by phone: \_\_\_\_\_

6. There ☐ is someone who can contact me if necessary (a friend, neighbor, social worker, family member, etc.)  
☐ is not

*If you do have a contact person, you must fill out the following information:*

Name of contact person: \_\_\_\_\_

Address of contact person: \_\_\_\_\_  
Street or P.O. Box address

\_\_\_\_\_  
City/County State Zip Code

Telephone number of contact person: \_\_\_\_\_  
Area code Telephone number

7. I ☐ do have a lawyer.  
☐ do not

*If you do have a lawyer, then you must fill in the following information:*

Name of lawyer: \_\_\_\_\_

Address of lawyer: \_\_\_\_\_  
Street or P.O. Box address

\_\_\_\_\_  
City/County State Zip Code

Telephone number of lawyer: \_\_\_\_\_  
Area code Telephone number

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Pottinger v. City of Miami  
Case No. 88-2406-CIV-ATKINS (S.D. Fla.)

Proof of Claim Form  
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## Part II. Description of the Arrest or Destruction of Property

### 8. What happened:

**Check all that apply. You may check more than one box if applicable. Keep in mind that awards will be made for persons who were arrested, jailed, convicted, or had property destroyed in Miami because they were homeless and were forced to perform innocent activities such as eating and sleeping in public places.**

 If you are filing this Form for someone else, you should answer Questions 8-12 with information pertaining to the claimant. For example, if the claimant was arrested by a City of Miami police officer, then check the first box in Question 8.

- ☐ I was arrested by a City police officer.
- ☐ I was taken to jail by a City police officer.
- ☐ I was convicted after being arrested by a City police officer.
- ☐ A City police officer, or other City worker (such as a sanitation worker), destroyed some of my personal belongings or forced me to abandon them.
- ☐ Other.

For each box you checked, provide the following information requested in Questions 9 through 12. If you suffered an arrest or had property destroyed more than once, please provide the following information for each incident in answering the Questions.

9. **When the incident(s) happened:** \_\_\_\_\_  
(You need not give an exact date, but the more specific you can be, the better.)

10. **Where the incident(s) occurred:** \_\_\_\_\_  
(Once again, the more specific you can be, the better.)

11. I ☐ was \_\_\_\_\_ homeless at the time the incident(s) happened to me.  
☐ was not

*"Homeless" means that you had no fixed and regular home or apartment of your own, and spent the nights in shelters or on the streets or in parks or other public places.*

continued on the next page ➡

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Pottinger v. City of Miami  
Case No. 88-2406-CIV-ATKINS (S.D. Fla.)

Proof of Claim Form  
Page 4 of 7

**12. Describe the incident(s) in your own words. If you need additional space, please attach a paper with the name and date of birth you supplied in answering Questions 1 and 2 on page 1 of this Form.**

[illegible]

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Pottinger v. City of Miami  
Case No. 88-2406-CIV-ATKINS (S.D. Fla.)

Proof of Claim Form  
Page 5 of 7

### Part III. Documentation

**13. Your claim must be supported by documentation. You should attach all documentation you may have concerning your identity and each incident in which you were arrested or your property was destroyed.**

**A. Please check below what documents you have attached showing who you are:**

- ☐ a photocopy of your driver's license  
☐ a photocopy of your passport  
☐ a photocopy of other official ID with your photo on it  
☐ other (describe): \_\_\_\_\_

Are you filing this Proof of Claim on behalf of someone else? ☐ Yes ☐ No

If you checked "yes," you must fill out the box below; otherwise, you may go on to Question 13.B on the next page.

<p>1. If you are filing a Proof of Claim for someone who is now dead ...</p>	<p>You must attach a <b>certified copy of the will</b> naming you as their beneficiary or executor. (If there is no will, attach a <b>certified copy of the death certificate</b> and documents establishing that you are the dead person's next of kin).</p> <p><i>Check here to indicate that you have attached the required documents:</i> <input type="checkbox"/> (If you do not, your Claim may be rejected.)</p>								
<p>2. If you are the legal guardian of the person for whom you are filing a Proof of Claim ...</p>	<p>You must attach a <b>certified copy of the court order</b> appointing you as the legal guardian.</p> <p><i>Check here to indicate that you have attached the required documents:</i> <input type="checkbox"/> (If you do not, your Claim may be rejected.)</p>								
<p>3. If there is some other reason why you are filing this Proof of Claim for someone else, please give a brief explanation of your relationship to the person, and why that person is unable to file for himself or herself ...</p> <table border="1" data-bbox="402 1457 911 1822"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table>									<p>You must attach some form of documentation to show your relationship to the person.</p> <p><i>Check here to indicate that you have attached the required documents:</i> <input type="checkbox"/> (If you do not, your Claim may be rejected.)</p> <p><i>If you need additional space, please attach a paper with your name, address, and date of birth on it.</i></p>

BSW      AQJ      KC

Pottinger v. City of Miami  
Case No. 88-2406-CIV-ATKINS (S.D. Fla.)


Proof of Claim Form  
Page 6 of 7

**B. Please check below what documents you have attached concerning the incident(s):**

- ☐ an arrest affidavit or arrest record
- ☐ a jail card
- ☐ a criminal court disposition
- ☐ other official records
- ☐ other documents that were created around the time of the incident(s) (for example, newspaper articles, affidavits you signed around the time of the incident(s), letters you sent at the time of the incident(s)).

**Part IV. Current Circumstances**

14. I ☐ am ☐ am not **currently** homeless. (Note: This question concerns your circumstances *now*, not at the time you were arrested or had property destroyed. Your answer will not affect your eligibility for an award, but it is important to the form of payment.)

 If you are filing this Form for someone else, you should answer Question 14 with information pertaining to the claimant. For example, if you are the legal guardian of the claimant, your answer should indicate whether the claimant is currently homeless.

*"Homeless" means that you have no fixed and regular home or apartment of your own, and spend the nights in shelters or on the streets or in parks or other public places.*


**IMPORTANT:** If you are **not** currently homeless, you must attach a copy of a document (for example, a lease, a statement from your landlord, a telephone or electric bill, a property tax bill) showing your name and the address where you live.


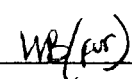
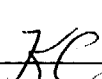
**Part V. Affirmation**

15. I declare under penalty of perjury that the foregoing is true and correct. Executed on

\_\_\_\_/\_\_\_\_/\_\_\_\_  
month      date      year

\_\_\_\_\_  
Signature

... continued on next page 

    
BSW      AQJ      KC

Pottinger v. City of Miami  
Case No. 88-2406-CIV-ATKINS (S.D. Fla.)

Proof of Claim Form  
Page 7 of 7

**Part VI. Notarization (Optional but strongly recommended)**

STATE OF FLORIDA  
COUNTY OF DADE

**16.** The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, by \_\_\_\_\_.  
*name of person acknowledging*

\_\_\_\_\_  
*Signature of Notary Public – State of Florida*

\_\_\_\_\_  
*Commissioned Name of Notary Public*

Personally known \_\_\_\_ or produced identification \_\_\_\_

Type of Identification produced \_\_\_\_\_

***File this Proof of Claim Form (all 7 pages), together with your documentation, at the address given on page 6 of the Instructions. File only the Proof of Claim Form itself. Keep the Instructions for your own reference.***

*BW* *WB (100)* *KC*  
BSW AQJ KC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 88-2406-CIV-ATKINS

MICHAEL POTTINGER, PETER  
CARTER AND BERRY YOUNG,  
Plaintiffs

vs.

CITY OF MIAMI,  
Defendant

---

## INSTRUCTIONS TO PROOF OF CLAIM

**Please read these instructions completely before filling out the Proof of Claim Form, which follows these Instructions.**

**Purpose of the Proof of Claim Form:**


In 1988, the American Civil Liberties Union (ACLU) brought a lawsuit against the City of Miami (City) on behalf of homeless people in Miami. The district court ruled that the City, through a municipal policy, had violated the constitutional rights of homeless people. It ordered the City not to arrest homeless people for involuntary, harmless acts they were forced to perform in public and not to seize and destroy homeless people's personal belongings without following the City's own procedures for handling found or seized property. The City appealed the case to the United States Court of Appeals for the Eleventh Circuit.

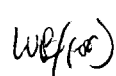
Under an order approved by the United States District Court in Miami on [DATE], the ACLU and the City have now settled this lawsuit. Under the settlement, you may be eligible for


- an award of \$1,500, payable in the form of vouchers for food, clothing, housing, or travel, or payments to certain third parties (stores, landlords, etc.); or
- an award of \$1,250, payable by check,

if you meet **all** the following four conditions:

1. You were homeless at some time between December 23, 1984 and [FILL IN EFFECTIVE DATE OF SETTLEMENT AGREEMENT].
2. For at least part of the period(s) when you were homeless, you lived in Miami.
3. Any of the following happened to you while you were homeless in Miami:

  
BSW

  
AQJ

  
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- a) you were arrested; or
  - b) you were taken to jail; or
  - c) you were convicted; or
  - d) A City police officer or other employee of the City (such as a sanitation worker) destroyed your personal belongings or forced you to abandon them.
4. The arrest, jailing, conviction, or property destruction happened because you had no place to live, and had to carry on life-sustaining activities such as eating, sleeping, sitting, congregating, or walking in public.
- Some examples:
- a) You were arrested for loitering or sleeping in a park.
  - b) You were arrested or taken to jail for waiting in line for food at a shelter.
  - c) Your sleeping bag, clothes, or other items were destroyed by city workers.

If there was more than one occasion in which you were arrested or had property destroyed under these circumstances, you should supply information and documentation for each of the incidents. However, in order to streamline the determination of awards, each claimant will receive the same award, regardless of whether they were arrested or had property destroyed more than once.

Note: This form should be filled out by the person who was arrested or had property destroyed (or his or her lawyer). This form may be completed by someone else only if:


- the person who was arrested or had property destroyed is now dead or is legally incompetent; and
- you are their legal beneficiary (such as heir, devisee, assignee, next-of-kin), or their legal guardian.

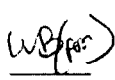
These instructions explain:


- How to fill out the Proof of Claim Form and where to get help in filling out the Form
- What documents you need to support your claim, and how to obtain those documents if you do not already have them
- When and where to file the Form
- What happens after you file the Form
- What happens if your claim is accepted.

### **Help in Filling Out the Form**

If you need help in filling out the form, please call the ACLU at [number].

  
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**Description of Your Arrest or the Destruction of Your Property**

In the Proof of Claim Form, you will need to provide a description of your arrest by a City police officer while you were homeless in Miami, or the destruction of your property by a City police officer or other employee of the City (such as a sanitation worker). You should provide as much information as you can. If you were arrested or had property destroyed more than one time while you were homeless in Miami, you should describe all the instances in one Proof of Claim Form.

**Documents Needed to Support Your Claim**

You must attach some form of written proof to support your claim. These include:

*A. Documentation of your identity:*

You must provide some evidence of who you are. That can be a photocopy of documents such as:

- an official ID with a photo on it (for example, a driver's license or a passport)
- other official ID cards
- other identification.

A copy of an official ID with your photo on it is the best documentation. If at all possible, please supply that.

If you are filling out this form for someone who is now dead or legally incompetent, you will also have to supply documentation of your status as the person's legal representative or beneficiary.

*B. Documentation of your arrest or of the destruction of your property:*

To prove what happened to you, you need to submit some form of documentation.

***Records that you may submit to show what happened to you:***

- an arrest affidavit or arrest record
- a jail card
- a criminal court disposition
- other official records
- other documents that were created around the time of the incident (for example, newspaper articles, affidavits you signed around the time of the incident, letters you sent at the time of the incident).

  
BSW      AQJ      KC



An “arrest record” is any written record that

- says who you are (e.g., has your name and birth date or social security number or some other information of that sort),
- shows the date you were arrested, and
- describes what laws you were charged with violating when you were arrested.

An “arrest affidavit” is an official form filled out by the officer who arrested you, when he or she arrested you, that

- says who you are (e.g., has your name and birth date or social security number or some other information of that sort)
- shows the date you were arrested, and
- describes what laws you were charged with violating when you were arrested.

A “jail card” is a record created at a local jail (Dade County Jail, TGK, etc.) that

- says who you are (e.g., has your name and birth date or social security number or some other information of that sort), and
- gives information about your stay in the jail (when you were put in jail, when you were released, etc.)

A “criminal court disposition” is a document created by the court that

- says who you are (e.g., has your name and birth date or social security number or some other information of that sort)
- states the charges against you, and
- states how they were resolved (dismissal, conviction, etc.)

If you do not have copies of them already, you can obtain official copies of the documents as follows:

- **Arrest records, arrest affidavits.** Fill out and sign this Proof of Claim Form, and then take it to the Public Window of the Records Unit of the City of Miami Police Department, Central Station, located at 400 N.W. 2nd Avenue, Miami. The Records Unit will then give you certified copies of the records you need, if available, at no charge.
- **Criminal Court Dispositions.** These must be obtained from the Office of the Clerk at [NAME AND ADDRESS OF COURTS]. There may be a charge for this.

BSW AQJ KC

- **Jail Cards.** These must be obtained from the jail where you were detained.

***Certifying official records:***

Although it is not required, it will help to have any official records “certified.” A certified record is one that is stamped by a city official as being a genuine copy. Official records that you obtain from the City at the Public Window of the Records Unit of the City of Miami Police Department, Central Station, 400 N.W. 2nd Avenue, Miami, will be certified at no cost to you. If you already have a copy of an arrest record or arrest affidavit that is not certified, you may still wish to go to the Public Window of the Records Unit to get a certified copy.

If you already have a copy of a jail card that is not certified, you may still wish to go to the jail where you were detained to get a certified copy. There may be a charge for this.

If you obtain any court records from the Office of the Clerk, you should ask to have them certified. There may be a charge for this.

**Signing the Form**


You must sign a statement at the end of the Proof of Claim Form stating that the information contained in it is true and correct. Your signature is required.

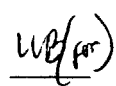
In addition, you should have your signature “notarized” if at all possible. A notary public is a person who is authorized to examine identity documents and verify your signature and identify. A notary public does *not* give legal advice. You are not required to have your signature notarized, but it will help prove your claim if you do. To get your signature notarized, you will need to show satisfactory evidence of your identity to a notary public. Examples include a drivers’ license, passport, military ID, or ID card issued by the INS. If you do not have any of these IDs, the notary public will explain to you what is required to have your signature notarized.


Many notaries public will expect you to pay them for notarizing your signature. The City will make the services of a notary public available to you for free at the Public Window of the Records Unit of the City of Miami Police Department, Central Station, 400 N.W. 2nd Avenue, Miami.

**When to File the Form**

Your Proof of Claim Form must be received at one of the addresses below no later than *[DATE TO BE FILLED IN WHEN SETTLEMENT AGREEMENT IS APPROVED — the date will be the end of the 90 day period set by the Magistrate.]*

  
BSW

  
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KC

**Where to File the Form**

You can file this form

- by mailing it to the following address:  
[INSERT ADDRESS]
- by bringing it in person to:  
[INSERT ADDRESS/HOURS; needs to include some evening and/or weekend hours]


**What Happens after You File the Form**

After the period for filing Proof of Claims Forms expires on *[DATE TO BE FILLED IN WHEN SETTLEMENT AGREEMENT IS APPROVED — the date will be the end of the 90 day period set by the Magistrate]*, a United States Magistrate will consider your Proof of Claim Form to decide whether you are eligible for an award. The City has the right to file an objection to your claim within 20 days. If so, you will be notified of the objection at the mailing address you fill in on the Proof of Claim Form. It is difficult to estimate how long it will take for a final decision to be made on your Claim, but the decision will be made no earlier than *[DATE TO BE FILLED IN WHEN SETTLEMENT AGREEMENT IS APPROVED — the date will be the last date the CITY has to file objections.]* The Magistrate may ask to speak with you about your claim if he or she needs more information. If the Magistrate needs to speak with you, you will receive a notice in the mail and, if possible, a telephone call.

Once the Magistrate has decided your claim, you will be notified by mail of the decision.

- If the decision is in your favor, the City of Miami has the right to ask the Magistrate to reconsider the decision within 15 days. After that period is over, you can collect your award (see below) unless the Magistrate grants the motion to reconsider and then denies your claim.
- If the decision is against you, you will have the right to ask the Magistrate to reconsider the decision within 15 days.

You will be given more information about these matters when you receive the notice of decision.

  
BSW      AQJ      KC

Pottinger v. City of Miami  
Case No. 88-2406-CIV-ATKINS (S.D. Fla.)

Instructions  
Page 7 of 7

### What Happens If Your Claim Is Accepted

If the Magistrate accepts your claim, then you will be eligible for an award:

- If you are currently homeless, you will receive an award of \$1,500, payable in vouchers for food, clothing, shelter, and travel, as well as third party payments on your behalf to established merchants, financial institutions, landlords, and the like. (For example, the City will pay a landlord for rent or a security deposit or both, up to \$1,500.)
- If you are not currently homeless, you may choose *either* to receive \$1,500 in vouchers and third party payments (see above), *or* to receive an award of \$1,250, payable by check.

*NOTE: If more than 400 people are awarded damages, it is possible that everyone's award may be reduced proportionately.*

You will be given information about how to claim your award at the time you are notified of the Magistrate's decision.

***NOTE: Keep these Instructions for your future reference. File only the Proof of Claim Form which follows.***

BSW   AQJ   KC

# VERIFIED STATEMENT REGARDING CURRENT STATUS

*Pottinger v. City of Miami*  
Case No. 88-2406-CIV-ATKINS

*This form must be filled out in full. Each item must be answered. Please print neatly in dark ink, or type. If you need more space, attach additional sheets with your name, address, and date of birth on them.*

## Part I. Identifying Information

1. Name of the claimant:

FIRST NAME	MIDDLE NAME	LAST NAME	SUFFIX (Jr., III, etc.)
2. Birth date of the claimant: _____ / _____ / _____			
	month	date	year

### SPECIAL NOTICE FOR PERSONS WHO HAVE FILED A CLAIM FOR SOMEONE ELSE:

If you filed a Proof of Claim Form for someone else, and are now planning to file this Verified Statement, you should do so only if the claimant (the person who was arrested or had property destroyed)

- is dead, or,
- if alive, is not currently homeless.

For Questions 1 and 2 above, write the name and birth date of the claimant, *not* your name and birth date. Write your own name here, and sign your own name in Part III:

FIRST NAME	MIDDLE NAME	LAST NAME	SUFFIX (Jr., III, etc.)
------------	-------------	-----------	----------------------------

## Part II. Current Circumstances

By signing this Form, I affirm that I am not **currently** homeless.

*Please note the following:*

- This statement concerns your circumstances *now*, not at the time you were arrested or had property destroyed.
- "Homeless" means that you have no fixed and regular home or apartment of your own, and spend the nights in shelters or on the streets or in parks or other public places.
- You must attach a copy of a document (for example, a lease, a statement from your landlord, a telephone or electric bill, a property tax bill) showing your name and the address where you live.

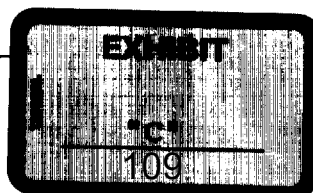
## Part III. Affirmation

I declare under penalty of perjury that the foregoing is true and correct. Executed on

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
month      date      year

\_\_\_\_\_  
Signature

*BSW*    *WJF*    *KC*  
BSW    AQJ    KC



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 88-2406-CIV-ATKINS

MICHAEL POTTINGER, PETER  
CARTER AND BERRY YOUNG,  
Plaintiffs

vs.  
CITY OF MIAMI,  
Defendant

**INSTRUCTIONS TO VERIFIED STATEMENT  
REGARDING CURRENT STATUS**

**Purpose of this Form:**

Your Proof of Claim Form has been accepted, and you are eligible for an award. Under the terms of the Settlement Agreement approved by the United States District Court in Miami on [FILL IN DATE], awards are payable as follows:

- *if you are currently homeless*, an award of \$1,500, payable in the form of vouchers for food, clothing, housing, or travel, or payments to certain third parties (stores, landlords, etc.); or
- *if you are not currently homeless*, an award of \$1,250, payable by check, or, if you prefer, an award of \$1,500, payable in the form of vouchers for food, clothing, housing, or travel, or payments to certain third parties (stores, landlords, etc.)

If you indicated that you were homeless at the time you filed your Proof of Claim, but are not currently homeless, then you may, if you wish fill out this form to indicate that you are eligible for an award of \$1,250 in cash, payable by check, rather than \$1,500 in vouchers.


(If more than 400 people were awarded damages, it is possible that everyone's award may be reduced proportionately.)

**Help in Filling Out the Form**

If you need help in filling out the form, please call the ACLU at [number].

**Documents Needed to Support Your Claim**

You must attach a copy of a document (for example, a lease, a statement from your landlord, a telephone or electric bill, a property tax bill) showing your name and the address where you live.

  
BSW      AQJ      KC

### **Signing the Form**

You must sign a statement at the end of the Proof of Claim Form stating that the information contained in it is true and correct. Your signature is required.


### **Where to File the Form**

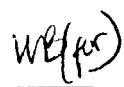
You can file this form


- by mailing it to the following address:  
[INSERT ADDRESS]
- by bringing it in in person to:  
[INSERT ADDRESS/HOURS; needs to include some evening and/or weekend hours]

### **What Happens after You File the Form**

Your Statement will be accepted if the City does not challenge it within 15 days. If it does, the Magistrate will make the final determination of your eligibility for a cash award.

  
BSW

  
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**CLASS CLAIMANT  
RELEASE OF ALL CLAIMS**

IN CONSIDERATION of my receipt of compensation in the form of *either* a check in the amount of ONE THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$1,250.00), or vouchers/third party payments in the amount of ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,500.00), but not both, receipt of which is hereby acknowledged on my behalf and on behalf of my heirs, personal representatives and assigns (hereinafter the "class compensation"), I, the undersigned Class Claimant (hereinafter the "RELEASOR"), release and forever discharge the CITY OF MIAMI, its current and former departments, officers, officials, agents, servants, and employees, including their respective heirs, representatives and assigns (hereinafter the "RELEASEES"), from any and all claims, demands, or causes of action (whether in the nature of subrogation or otherwise), resulting in or from personal injury, mental injury, disability, property damage, loss of services, loss of consortium, costs, expenses, attorney's fees, lost wages or other compensation, deprivation of any kind (including reputation or civil rights), on account of, or in any way growing out of, or arising from, any misdemeanor arrest or any destruction of my property by any officer, agent or employee of the CITY OF MIAMI, occurring while I was homeless at any time from December 23, 1984, thereafter, through \_\_\_\_\_ [*insert effective date of the Settlement Agreement*], and for which a class action lawsuit was filed by Michael Pottinger, et al., plaintiffs, against the City of Miami, defendant, in the United States District Court, Southern District of Florida, Case No. 88-2406-Civ-Atkins (the "incident"), which has been settled by a certain Settlement Agreement approved by the Court on \_\_\_\_\_ [*insert date*]. This release does not cover injuries suffered by class members which were outside the scope of the plaintiffs' Second Amended Complaint, docketed September 8, 1989.

To procure said class compensation, I hereby declare and covenant as follows:

- (1). That I am 18 years of age or older; and
- (2). That I received notice of the hearing before the Court regarding the reasonableness of the Settlement Agreement, I am a member of the class, and I have submitted a claim for class compensation under the terms of the Settlement agreement (which claim was accepted by the United States Magistrate Judge); and
- (3). That I have not been influenced in any manner, or to any extent, in making this Release by any representations or statements regarding damages, or regarding any other matters, by the class representatives, or by the RELEASEES (including any person or attorneys representing them, or any of them individually, or anyone employed by them); and
- (4). That I have had the opportunity to consult with counsel, whether my own attorney(s) or an attorney from the American Civil Liberties Union, and that I fully understand the terms of this Release, and that I am making full and final settlement of all claims of every nature and character described above against the RELEASEES; and

RELEASOR'S  
INITIALS

RELEASOR'S  
ATTORNEY'S  
INITIALS

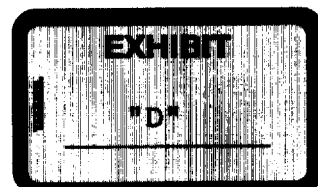
**Class Claimant Release of All Claims**

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BSW

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KC  
KC

Page 1 of 2





(5). That there is no outstanding attorney's lien in connection with the class compensation being received by me (the RELEASOR); and

(6). That the terms of this Release are contractual and not a mere recital; and

(7). That I hereby agree, as a further consideration and inducement, that this Release shall apply to all unknown and unanticipated injuries and damages resulting from said incident, as well as to those now known to me; and

(8). I understand that the RELEASEES admit no liability of any sort by reason of said incident and that said class compensation is made in settlement and compromise to terminate further controversy respecting all class member claims for damages that I, as a member of the class, have heretofore asserted or that I, or my personal representative, might or could hereafter assert because of the said incident.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

**(CAUTION: READ AND  
UNDERSTAND THIS  
DOCUMENT FULLY  
BEFORE SIGNING)**

X \_\_\_\_\_  
CLASS CLAIMANT (RELEASOR)

STATE OF FLORIDA )

) SS:

COUNTY OF DADE )

\_\_\_\_\_  
[print full name above]

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1997, by \_\_\_\_\_ [CLASS CLAIMANT (RELEASOR)], who is personally known to me or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

My Commission Expires:

\_\_\_\_\_  
Signature of Notary Public  
State of Florida

\_\_\_\_\_  
Type, Print or Stamp Name of  
Notary Public

\_\_\_\_\_  
RELEASOR'S  
INITIALS

\_\_\_\_\_  
RELEASOR'S  
ATTORNEY'S  
INITIALS

**Class Claimant Release of All Claims**

Page 2 of 2

BSW  
BSW

AQJ  
AQJ

KC  
KC



**Office of the City Attorney**

Miami Riverside Center  
444 S.W. 2 Avenue, Ste. #945  
Miami, FL 33130-1910  
(305) 416-1800-Telephone  
(305) 416-1801 - Telecopier

**FAX COVER SHEET**

**DATE:** October 1, 1998

**TO:** BENJAMIN S. WAXMAN, ESQ. **PHONE:** (305) 858-9550  
**FAX:** (305) 858-7491

**CC:** STEVE SCHNABLY, ESQ. **PHONE:** (305) 284-4817  
**FAX:** (305) 284-1588

**FROM:** WARREN BITTNER **PHONE:** (305) 416-1800  
ASST. CITY ATTORNEY **FAX:** (305) 416-1801

**RE:** POTTINGER v. CITY OF MIAMI

**Number of pages including this page:** 5

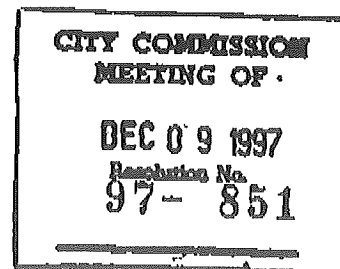
**MESSAGE:** ATTACHED AS PER YOUR REQUEST OF A FEW WEEKS AGO IS A COPY OF THE CITY COMMISSION RESOLUTION APPROVING THE SETTLEMENT AGREEMENT.

J-97-894  
12/9/97RESOLUTION NO. 97- 851

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO ENTER INTO A SETTLEMENT AGREEMENT IN THE CLASS ACTION LAWSUIT BROUGHT BY THE AMERICAN CIVIL LIBERTIES UNION ON BEHALF OF THE CLASS OF HOMELESS PERSONS REPRESENTED BY MICHAEL POTTINGER, ET AL., AND AUTHORIZING THE DIRECTOR OF FINANCE TO PAY SUCH AMOUNTS, TO SUCH PERSONS, AND AT SUCH TIMES, AS IS CALLED FOR BY THE TERMS OF THE SETTLEMENT AGREEMENT, WITHOUT ANY ADMISSION OF LIABILITY, IN FULL AND COMPLETE SETTLEMENT OF ANY AND ALL CLAIMS AND DEMANDS AGAINST THE CITY OF MIAMI IN THE UNITED STATES DISTRICT COURT, CASE NO. 88-2406-CIV-ATKINS, AND INCLUDING A POLICE PROTOCOL WHICH SHALL GUIDE THE CONDUCT OF POLICE OFFICERS IN THEIR FUTURE DEALINGS WITH HOMELESS PERSONS, AND OTHER MISCELLANEOUS PROVISIONS, WHICH UPON APPROVAL BY THE COURT SHALL ACT AS A RELEASE OF THE CITY OF MIAMI FROM ANY AND ALL CLAIMS AND DEMANDS OF ALL CLASS MEMBERS; ALLOCATING FUNDS THEREFOR FROM THE CITY OF MIAMI SELF-INSURANCE AND INSURANCE TRUST FUND, INDEX CODE NO. 424401-661, WITH CONDITIONS.

WHEREAS, Michael Pottinger, et al., representing a class of homeless persons within the City of Miami, through their attorneys, the American Civil Liberties Union, filed a lawsuit against the City of Miami in the United States District Court, Southern District of Florida, Case No. 88-2406-CIV-ATKINS, for violation of civil rights arising out of the arrest, and alleged destruction of property, of homeless persons; and

WHEREAS, the above lawsuit has been investigated by the City Attorney's Office, the Department of Police, the Department of



Fire, Rescue and Inspection Services, the Office of Homeless Programs, and the City Manager's Office, and said offices and departments recommend that said lawsuit be settled as set forth in the Settlement Agreement attached to Minutes of the Executive Session held on December 9, 1997 (hereinafter the "Settlement Agreement");

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The City Attorney is hereby authorized to enter into the "Settlement Agreement" with Michael Pottinger, et al, representing the class of homeless persons defined therein, and the Director of Finance is hereby authorized to pay such amounts, to such persons, and at such times, as is called for by the terms of the "Settlement Agreement," without any admission of liability, in full and complete settlement of any and all claims and demands of against the City of Miami, Florida, in the United States District Court, Southern District of Florida, Case No. 88-2406-CIV-ATKINS, and including a police protocol which shall guide the conduct of police officers in the future when dealing with homeless persons, and other miscellaneous provisions, which, upon approval by the Court shall act as a release of the City of Miami from any and all claims and demands of all class members, with funds therefor hereby allocated from the City of Miami Self-Insurance and Insurance Trust Fund, Index Code No. 424401-661, with the following conditions, (1) that a trust fund be established for the purpose of receiving funds from the private and/or public sectors to be used to satisfy the City's

obligations to the successful homeless claimants under the terms of the "Settlement Agreement;" (2) that the principal amount of attorneys fees payable under the "Settlement Agreement" be paid over three (3) fiscal years without interest; and (3) that if these conditions are not acceptable to the Plaintiffs, the "Settlement Agreement" is to come back to the City Commission for further review.

Section 2. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 9th day of December, 1997.

  
XAVIER SUAREZ, MAYOR

ATTEST:

  
WALTER J. BORMAN  
CITY CLERK

RISK MANAGEMENT REVIEW:

  
MARIO E. SOLDEVILLA  
RISK MANAGEMENT ADMINISTRATOR

BUDGETARY AND MANAGEMENT  
ANALYSIS REVIEW:

  
DIPAKH PAREKH, DIRECTOR

PREPARED AND APPROVED BY:

  
WARREN R. BITTNER  
ASSISTANT CITY ATTORNEY

APPROVED AS TO FORM AND  
CORRECTNESS:

  
A. QUINN JONES, III  
CITY ATTORNEY

WRB/csk/W2065WB

STATE OF FLORIDA )  
COUNTY OF DADE )  
CITY OF MIAMI )

I, WALTER J. FOEMAN, City Clerk of the City of Miami, Florida, and keeper of the records thereof, do hereby certify that the attached and foregoing pages numbered 1 through 3 inclusive, constitute a true and correct copy of a Resolution passed and adopted by the City Commission at the meeting held on the 09th day of December, 1997. IN SAID RESOLUTION WAS DESIGNATED AS RESOLUTION No. 97-851 CUS.

IN WITNESS WHEREOF, I hereunto set my hand and impress the Official Seal of the City of Miami, Florida this 2 day of July, 1998

WALTER J. FOEMAN  
City Clerk  
Miami, Florida

By:   
Deputy Clerk

(OFFICIAL SEAL)

CLOSED  
CIVIL  
CASE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-2406-CIV-MORENO

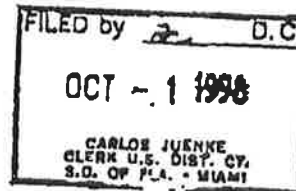
MICHAEL POTTINGER, PETER  
CARTER and BERRY YOUNG,

Plaintiff,

vs.

CITY OF MIAMI,

Defendant.



FINAL ORDER APPROVING SETTLEMENT  
AND DISMISSING CASE

THIS MATTER is before the Court upon the limited remand order from the Eleventh Circuit Court of Appeals issued on April 9, 1998 to consider the proposed settlement agreement pursuant to Fed.R.Civ.P. 23(e). The Court held a public hearing on September 29, 1998 to consider the parties' joint motion to approve the proposed settlement agreement. After hearing from all interested parties, the Court approves the proposed settlement.

In approving the settlement, the Court has weighed the following relevant factors:

- (1) the likelihood that the judgment would be upheld on appeal if the motion were not granted;
- (2) the complexity, expense, and duration of this ten-year-old case to date, all of which would be increased by further proceedings if the settlement were not approved;

- (3) the judgment of experienced trial counsel for both parties;
- (4) any objections raised by the class members or the public; and
- (5) the public interest.

See *Leverso v. South Trust Bank of Ala., Nat'l Assoc.*, 18 F.3d 1527, 1530 n.6 (11<sup>th</sup> Cir. 1994); *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11<sup>th</sup> Cir. 1984).

In weighing these factors, the Court is mindful that "settlements are favored over continued litigation." *United States v. Board of Public Instruction of St. Lucie County*, 977 F. Supp. 1202, 1206 (S.D. Fla. 1997) (citing *United States v. Miami*, 614 F.2d 1322, 1333 (5<sup>th</sup> Cir. 1980), *reh'g en banc on other grounds*, 664 F.2d 435 (5<sup>th</sup> Cir. 1981) (per curiam)); see also *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5<sup>th</sup> Cir. 1977).

The Court, in approving the settlement agreement, finds that it represents the product of nearly ten years of litigation, appeals, and mediation. The Court further recognizes that the parties have engaged in a serious and substantial effort to settle the issues in a manner that protects the interest of the Plaintiffs, the City, and the public.

In approving the settlement agreement, the Court makes the following findings of fact and separate conclusions of law, without objection, which shall support its judgment approving the proposed Settlement Agreement:



## I. PROCEDURAL HISTORY

1. On December 23, 1988, Plaintiffs filed this action against the City of Miami on behalf of themselves and other homeless persons living in the City pursuant to 42 U.S.C. § 1983 alleging that the City had a custom, practice and policy of arresting homeless people for conduct that includes ordinary activity of daily life on the streets.

2. The Honorable C. Clyde Atkins certified a class of "homeless persons who reside or will reside on the streets, sidewalks, parks, and in other public places in the geographic area bound on the north by Interstate [3]95, on the south by Flagler Street, on the east by Biscayne Bay, and on the west by Interstate 95, within the City of Miami, who have been, expect to be, or will be arrested, harassed, or otherwise interfered with by members of the City of Miami Police Department for engaging in the ordinary and essential activities of daily living in public due to the lack of other adequate alternatives." *Pottinger v. City of Miami*, 720 F.Supp. 955, 960 (S.D. Fla. 1989).

3. On April 26, 1990, Judge Atkins ordered the City not to destroy property collected at the time of contact with homeless persons and to follow its own written policy of preserving property obtained by its police unit. A year later, Judge Atkins found the City in contempt of the order as a result of incidents under the I-395 underpass and in Lummus and Bicentennial Parks. However, Judge Atkins denied a motion by Plaintiffs to enjoin the City's plan to evacuate and close Lummus Park and the area under I-395, based on

the City's assurances that it would offer comparable or better housing to displaced individuals.

4. Judge Atkins bifurcated the trial of the case into liability and damage phases. A non-jury trial on liability was held and Judge Atkins ruled that the City, through a municipal policy, violated various constitutional rights of the Plaintiffs. Accordingly, Judge Atkins enjoined the City from arresting the homeless Plaintiffs for certain acts they were forced to perform in public, and from seizing and destroying their property without following its own procedures for handling found or seized property. *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992). Judge Atkins directed the establishment of two or more arrest-free zones, or "safe zones," where the City would be enjoined from arresting homeless individuals for engaging in such harmless, involuntary conduct.

5. The City appealed to the Eleventh Circuit Court of Appeals, which stayed implementation of Judge Atkins' order pending appeal. The Court of Appeals subsequently remanded the case to Judge Atkins to make further findings of fact and to clarify the judgment. *Pottinger v. City of Miami*, 40 F.3d 1155 (11<sup>th</sup> Cir. 1994). Judge Atkins complied and concluded that "[t]hough improvement in the overall situation is occurring via the [Dade County Homeless] Trust," "the salient facts of this case have not changed substantially...."

6. On February 7, 1996, the Court of Appeals referred this matter to its Chief Circuit Mediator for settlement discussions.

*Pottinger v. City of Miami*, 76 F.3d 1154 (11<sup>th</sup> Cir. 1996).

7. The settlement negotiations were conducted over a period of 20 months. During that period, counsel for Plaintiffs met approximately 15 times for full-day mediation sessions with counsel for the City, involving more than 100 total hours of face-to-face mediation. Many other participants, including a City Commissioner, the City Manager, the Fire Chief, the Assistant Chief of Police, and the Director of the City of Miami Office of Homeless Programs, were also involved in a number of the mediation sessions. In addition, representatives of homeless service providers participated in a number of sessions. The City was represented by experienced counsel from the City Attorney's Office and by outside counsel, including Tom Scott and Kendall Coffey. Plaintiffs were represented by a team of experienced counsel as well, led by Benjamin Waxman, a criminal appellate specialist with extensive experience in constitutional and criminal issues, and former co-Chair and later President of the Greater Miami Chapter of the ACLU. Counsel were also assisted by experts in homelessness, Mayors Xavier Suarez and Joe Carollo, members of the City Commission, particularly Commissioner Wilfredo Gort, the Chiefs of the Police and Fire Departments, and class representatives.

8. The extensive mediation sessions resulted in the signing of a settlement agreement resolving every remaining issue in this case.

9. On December 9, 1997, the City Commission approved the settlement agreement by a vote of 3-2, subject to the condition

that the \$900,000 in attorneys' fees agreed to in paragraph 25 be paid out over three years. Within the ten-day period for vetoes, the Mayor announced that he would not veto the settlement agreement. On February 12, 1998, the Oversight Committee appointed by Governor Lawton Chiles of the State of Florida to assist the City in overcoming its fiscal crisis approved the settlement agreement.

## II. THE SETTLEMENT AGREEMENT

The settlement agreement is a 31-page document with four attachments:

- 1) Exhibit A is a Departmental Order that the City has agreed will be adopted by the City of Miami Police Department.
- 2) Exhibit B is a Proof of Claim Form, with Instructions in English, Spanish and Creole.
- 3) Exhibit C is a form pertaining to the collection of homeless awards.
- 4) Exhibit D is a "Class Claimant Release of All Claims."

The Settlement Agreement provides for a dismissal with prejudice of this lawsuit, including the three pending appeals, without additional costs or attorneys' fees, except for the \$900,000 specifically provided in the agreement. Although the City of Miami does not admit liability, it agrees to implement training for its law enforcement officers, and to adopt a policy to protect the constitutional rights of homeless persons through measures

including a "Law Enforcement Protocol" and a procedure to monitor the officers. The City's aggregate responsibility for claims is limited to \$600,000, which shall be placed in a Compensation Fund administered by a United States Magistrate appointed by this Court.

#### ATTORNEY'S FEES

In recognition of the fact that this litigation has spanned nearly ten years, including two trials, numerous other hearings before the district court, two appeals, as well as extensive court-ordered mediation, the City agreed to pay the Plaintiffs' attorneys \$900,000 for fees and costs. The Miami City Commission adopted specifications concerning payment, and conditioned the City's acceptance of the Settlement Agreement on payment of these fees over three years, without interest. Plaintiffs have accepted this condition.

#### FAIRNESS HEARING

On May 12, 1998, Judge Atkins entered an Omnibus Order approving, with modifications, the class notice. The notices to class members were published, as provided in Judge Atkins' order, in:

- a) the Miami Herald and El Nuevo Herald on Friday, July 10, 1998, Tuesday, July 14, 1998, and Sunday, July 19, 1998;
- b) the Miami Times on three successive Thursdays, July 9, 1998, July 16, 1998 and July 23, 1998; and
- c) the New Times (Miami) issues of July 9-15, 1998, July 16-22, 1998 and July 23-29, 1998.

In addition, the Court takes judicial notice of the fact that a number of articles about the proposed settlement have appeared in the Miami Herald in the past year.<sup>1</sup>

Strong public support for approval of the settlement agreement was expressed during the September 29, 1998 hearing by the following groups: class representatives; downtown business groups; downtown residents; City of Miami officials, including Manager and Chief of Police Donald Warshaw and Commissioner Wilfredo Gort; and homeless advocacy groups and civic leaders such as Alvah Chapman, head of the statewide homeless trust. Over 60 individuals were present in the court, with only one partial dissenting voice expressing concern that some homeless individuals may unwisely spend the \$1,500 to be received. The dissenter, a former homeless individual, argued that the money might be better spent on repairing buildings and establishing programs to reintegrate the homeless into society.

Since this lawsuit was initiated, the Dade County Homeless Trust was created, funded by a 1¢ food and beverage tax in Miami-Dade County, as well as by numerous philanthropic contributions. As part of the effort to provide for homeless people, the Trust, in conjunction with the Community Partnership for the Homeless, has established a Homeless Assistance Center in the City of Miami.

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<sup>1</sup>ACLU Informing Homeless of \$1,500 Compensation, Miami Herald, July 14, 1998, at 3B; A Worthy Settlement, Miami Herald, December 18, 1997, at 28A (editorial endorsing settlement); Bruce Taylor Seeman, Settlement Backs Civil Rights of Homeless, Miami Herald, December 18, 1997, at 1A; Bruce Taylor Seeman, Homeless Lawsuit Near Settlement, Miami Herald, November 16, 1997, at 1B.

### CONCLUSIONS OF LAW

It is uncontroverted that the settlement agreement was reached as a result of good faith, arms-length bargaining, as the settlement was reached at a very advanced stage of the litigation and counsel for both sides are experienced attorneys who have vigorously represented their respective clients. The case was strongly contested over eight years, including two trials and two appeals. Furthermore, the costs of failing to approve the settlement agreement would be substantial. If this Court did not approve it, further litigation would delay for quite some time any relief for class members and any resolution of the City's liability. Although the Court expressed concern about such matters as the availability of public restrooms for the homeless and the amount of attorney's fees, the Court does not have the power to modify a proposed settlement agreement and order its acceptance over either party's objection. In the City's case, any modification would mean presenting the revised settlement agreement again to the City Commission, the Mayor, and the State Oversight Committee, with uncertain results. The support for the settlement agreement is widespread among the community, as indicated by the interested citizen who remarked at the hearing in hyperbolic terms: "The Court could bring back sanity to the streets of Miami with the stroke of a pen." In addition, there appears to be unanimous support from within the class.

The Court further finds that the notice given the class

members pursuant to Judge Atkins' Order of May 12, 1998 constituted fair and effective notice as provided under Fed.R.Civ.P.23. The notice fairly and accurately described the nature of the proposed settlement agreement, the persons whose rights would be affected, and the impact of its terms on their rights. Individual notification by mail to the homeless would not have been feasible. In addition, the local media published numerous articles about the proposed settlement agreement.

Any settlement agreement is obviously a compromise, one not likely to be perfect from either party's point of view. However, taken as a whole, the settlement agreement represents a fair and equitable resolution of this case.

Plaintiffs originally sought primarily injunctive relief, and a settlement that provided either no damages or nominal damages would have been fair and equitable. The provision of compensatory damages in the amount of \$600,000, or \$1,500 per successful claimant (assuming no pro-rating), represents a significant benefit for Plaintiffs. The provision establishes a monetary benefit, but perhaps more importantly, this recovery represents, in a tangible way, the dignity and rights of homeless persons. Further, if the Compensation Fund of \$600,000 is not exhausted, the remaining money will be used for a "Start Off Fund" to help members of the homeless community to afford permanent shelter. Finally, the manner of disbursement of the funds is fair and adequate, in accordance with the carefully-crafted procedure to be supervised by a United States Magistrate. The procedure is designed to protect all class



members. It ensures that as many class members as possible recover, by having a relatively informal procedure with as little documentation as possible. At the same time, it protects that fund from exhaustion by false claims, by ensuring that some form of documentation be submitted before a claim can succeed. The disbursement of monies from the "Start Off Fund" will be handled by the City's Office of Homeless Persons, which is experienced in such matters, and will be audited by the City's Department of Internal Audits at the conclusion. Recognizing that no mechanism for providing damages to class members, particularly homeless and formerly homeless persons, can perfectly balance the need to provide relief to all of those who were injured and the need to limit relief to such persons, the Court finds the settlement agreement's provisions of compensatory damages to be fair and adequate.

The Court also concludes that the agreed-upon award of attorney's fees is reasonable, in light of the length of this case, the quality of the attorneys, and the novelty of the issues raised, as previously described in the procedural history section of this order. The Court recognizes that the attorney's fees amount is greater than the compensatory award. However, courts have approved attorney's fees many times greater than compensatory damages. See Davis v. Locke, 936 F.2d 1208, 1215 (11<sup>th</sup> Cir. 1991); Cullins v. Georgia Dep't of Transportation, 29 F.3d 1489, 1494 (11<sup>th</sup> Cir. 1994). In this case, counsel for Plaintiffs obtained not only extensive injunctive relief, but significant compensatory relief as

well.

WHEREFORE, it is ORDERED and ADJUDGED that:

(1) The Joint Motion to Approve Settlement Agreement is GRANTED.

(2) This lawsuit is DISMISSED with prejudice.

(3) The Court retains jurisdiction to enforce the settlement, and

(4) All pending motions are denied as moot.

DONE and ORDERED this 1st day of October 1998 in Miami, Dade County, Florida.

  
FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Benjamin S. Waxman, Esq.  
Warren Bittner, Esq.

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

**Case Number: 88-2406-CIV-MORENO**

MICHAEL POTTINGER, PETER CARTER, and  
BERRY YOUNG,

Plaintiffs,

vs.

CITY OF MIAMI,

Defendant.

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**ORDER REQUIRING EVIDENTIARY HEARING**

On October 1, 1998, this Court approved the Consent Decree in this case, known as the *Pottinger* Settlement, which governs the protocol for arrest of homeless persons and the destruction of their property by City of Miami Police. Fifteen years later, the City is requesting to modify the *Pottinger* Settlement. This Court held a substantive hearing on October 23, 2013 to determine whether the City of Miami has made a *prima facie* showing that it is entitled to an evidentiary hearing on its Motion for Limited Modification of the Settlement Agreement.

The City is seeking three sets of modifications. The City requests the Court exclude from *Pottinger's* purview the chronically homeless (those that repeatedly refuse shelter) and registered sex offenders, who are homeless as a result of legislative enactments restricting residency. The City also proposes a variety of changes to the Agreement's Law Enforcement Protocol. Among other changes, the City seeks to allow police officers to offer the homeless mats at shelters, to remove certain life-sustaining conduct misdemeanors from the Agreement, and to expand the territory of available shelters beyond City limits.

*Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) sets out the parameters under which federal courts can modify consent decrees, as is the request here. The standard for modifying a consent decree set forth in *Rufo* is a flexible one. See *Horne v. Flores*, 557 U.S. 433, 450-451 (2009) (stating the purpose of the standard is to protect the finality of judgments while still ensuring that courts maintain a sufficiently flexible approach to allow returning matters to local control when warranted). “A party seeking modification of a consent decree may meet its initial burden by showing a significant change in either factual conditions or the law.” *Rufo*, 502 U.S. at 384. “Modification of a consent decree may be warranted when changed factual conditions make compliance with the decree substantially more onerous.” *Id.* Modifications are also appropriate when there are unforeseen obstacles that render the decree unworkable. *Id.*

The growth and redevelopment of Downtown Miami, safety concerns generating from September 11, 2001 and the recent bombings at the Boston Marathon, increased services for the homeless, and the Florida and County laws enacted to restrict residency of sex offenders are the primary changes the City relies on in support of its motion. The Court agrees the City has made a *prima facie* showing of changed circumstances warranting an evidentiary hearing.

First, it is undisputed the *Pottinger* Agreement predates Florida Statute § 775.215 and Miami-Dade County’s “The Lauren Book Child Safety Ordinance.” Both legislative enactments impose residency restrictions over those convicted of certain sex offenses. Additionally, Alyce Robertson, the Executive Director of the Miami Downtown Development Authority, provided an affidavit affirming the accuracy of the information in the City’s motion detailing changed factual circumstances in Downtown Miami. Those changes include the increase in available beds for the homeless, the effects of the new Camillus House campus, and the establishment of new services for

the homeless. The City also explains the demographic changes that have occurred in Downtown Miami, including the construction of over 22,000 condominium units, the establishment of over 200 new restaurants and retail shops, the opening of new cultural and entertainment venues, and the development of many new hotels. Finally, Officer James Bernat, a Neighborhood Resource Officer for the City of Miami, highlights in his affidavit new safety concerns over abandoned property left in heavily populated areas in the wake of the Boston Marathon bombing this past year. In light of these changes, the City contends the *Pottinger* Agreement must be modified so that it continues to be workable for the City and its homeless population.

Given the litany of changes the City has identified, the Court finds that an evidentiary hearing is essential to determine whether the City can meet its burden under *Rufo* and Rule 60(b). Accordingly, it is

**ADJUDGED** that the Court finds an evidentiary hearing is needed before the Court can rule on the Defendant City of Miami's Motion for Limited Modification of the Settlement (**D.E. No. 464**), filed on **September 11, 2013**.

Plaintiffs shall file a list of exhibits and witnesses by **November 15, 2013 at noon**. Defendant shall file a list of exhibits and witnesses by **November 26, 2013 at noon**. Both sides shall include a one-page description of each witness's testimony. By no later than **November 7, 2013**, the parties shall file a joint notice indicating the dates they are not available for an evidentiary hearing in the month of December.

DONE AND ORDERED in Chambers at Miami, Florida, this 29<sup>th</sup> day of October, 2013.

  
FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE

Copies provided to:  
Counsel of Record

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

**Case Number: 88-2406-CIV-MORENO**

MICHAEL POTTINGER, PETER CARTER,  
BERRY YOUNG, CAROLE PATMAN, and  
DAVID PEERY,

Plaintiffs,

vs.

CITY OF MIAMI,

Defendant.

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**ORDER GRANTING JOINT MOTION TO APPROVE SETTLEMENT**

THIS CAUSE came before the Court upon the parties' Joint Motion to Approve Settlement (D.E. No. 525), filed on **December 12, 2013**.

THE COURT has considered the motion, oral argument, and the pertinent portions of the record, and being otherwise fully advised in the premises, it is


**ADJUDGED** that the motion is GRANTED for the reasons stated in Open Court on February 28, 2014. The Court finds that the proposed modification of the prior settlement agreement obtained under the direction of the mediator, former Judge Angel Cortiñas, is fair, adequate, reasonable, and not the product of collusion. The modifications take into consideration the changed circumstances of the City of Miami, the drastic reduction of the City's homeless population, the availability of beds in shelters, and public restrooms. The homeless, who are registered sex offenders, will no longer be part of the protected class. Urinating and defecating in public will no longer be protected life sustaining activities, provided that there is an available restroom within a 1/4 mile. Temporary

structures in parks and lighting fires in parks will no longer be permitted.

The Court has considered submissions from the class members and concludes that they do not constitute objections. The Court also heard from interested parties, including Miami-Dade County Mayor Carlos Gimenez, former Miami Mayor Maurice Ferre, homeless benefactor and stellar citizen Robert Dickinson, and others.

The Court finds that all the requirements of Federal Rule of Civil Procedure 23 have been met and incorporates the addendum to the original settlement agreement. All other pending motions are DENIED as moot.

DONE AND ORDERED in Open Court on February 28, 2014 and signed in Chambers at Miami, Florida, this 10 day of March, 2014.

  
\_\_\_\_\_  
FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE

Copies provided to:  
Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-2406~CIV~MORENO

MICHAEL POTTINGER, PETER  
CARTER AND BERRY YOUNG,

Plaintiffs,

vs.

CITY OF MIAMI,

Defendant.

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**ADDENDUM TO SETTLEMENT AGREEMENT**

The Plaintiffs, MICHAEL POTTINGER, et al., and the class of Plaintiffs they represent (hereinafter collectively referred to as "Plaintiffs"), and the Defendant, THE CITY OF MIAMI (hereinafter "CITY"), by and through their respective undersigned counsel, agree to the following addendum to the settlement agreement effective October 1, 1998. Subject to the approval of this Court, except as herein modified, the terms and conditions of the Settlement Agreement effective October 1, 1998 shall remain in full force and effect. The language underlined constitutes additions to the settlement agreement and the language stricken constitutes deletions to the settlement agreement.

**VII. Law Enforcement Protocol**

10. Definition of "Homeless Person". An individual is considered a "homeless person" if he or she "lacks a fixed, regular, and adequate night time residence and has a primary night-time residency that is: (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations; (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term 'homeless person' does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a state law." 42 U.S.C. §11301, et seq. (1994). An



officer is allowed to make reasonable inquiry to make this determination. For purposes of this Addendum, any person identified as a registered sex offender under section 775.21 F.S. or sexual predator under section 775.215, F.S. or Sections 21-277 to 21-21285, Miami-Dade County Code, because they do not qualify for Available Shelter, is not afforded the protections under Section VII, Paragraph 14, of the Settlement Agreement.

11. Definition of "Available Shelter". An "available shelter" means a shelter for a period of at least 24 hours, with a bed or a mat, at least three inches thick, at no cost to the homeless person, within the territorial boundaries of the CITY or within one mile thereof, or if agreed to by the homeless person, within Miami-Dade County, that treats homeless persons with dignity and respect, imposes no religious requirements, and, unless agreed to by the homeless person, does not impose ~~involuntary~~ substance abuse or mental health treatment as a condition for shelter.

14. Law Enforcement Protocol: The City hereby adopts a protocol to further protect the rights of homeless persons, by limiting the circumstances under which arrests can be made, including the handling of their personal property:

A. "Homeless Person Observed Not Engaging in Any Criminal Conduct:

There can be no arrest or detention. A law enforcement officer, social worker, or ~~CITY outreach worker~~ a community outreach specialist may approach the homeless person and advise him or her of shelter, services, or assistance which are then currently available. When the contact with the homeless person has been initiated by a "citizen's complaint," the law enforcement officer may, whenever appropriate, call for the assistance of ~~outreach worker~~ a community outreach specialist, who, if available, may begin the process of engaging the homeless person in a dialogue which is intended to advise the homeless person of shelter, services or assistance that is/are available. Required Records: (1) If such an approach and advice concerning shelter, services, or assistance occurs by a law enforcement officer, the law enforcement officer shall complete a Field Information Card, or its electronic equivalent. In the case of a homeless person who refuses and who has refused assistance in the

past thirty days, a new Field Information Card, or its electronic equivalent, is not required to be completed for each encounter as long as the prior-filed Field Information Card, or its electronic equivalent, is updated with the new date of contact with the homeless person. Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

B. Homeless Person Reasonably Believed to be Mentally Ill: Where a homeless person meets the criteria for involuntary examination under Florida Law (currently section 394.463, F.S.), "Baker Act," a law enforcement officer may, in his or her discretion, take the homeless person to a receiving the nearest receiving facility for involuntary examination. Required Records: If the homeless person is taken to ~~a receiving the nearest receiving facility~~ for involuntary examination, a copy of the forms required by section 394.463 (hereinafter "Baker Act Forms"), shall be filed with the nearest receiving facility ~~Mental Health Crisis Center at Jackson Memorial Hospital~~ and a Field Information Card, or its electronic equivalent, to include the name, date, location, and references that the person was Baker Acted shall be completed. Records Filing: A copy of all required records shall be filed with the applicable unit within the Miami Police Department.

C. Homeless Person Observed Violating a "Life Sustaining Conduct" Misdemeanor:

1. "Life sustaining conduct" misdemeanors are those which a homeless individual commits by the mere fact that he or she is without shelter, and must conduct life sustaining activities, such as eating, sleeping, sitting, congregating, or walking in public.

2. If the homeless person described above is observed committing one of the below listed "life sustaining conduct" misdemeanors, the law enforcement officer may warn the homeless person to stop the unlawful conduct. If there is no "available shelter," no warning shall be given. If there is an "available shelter," the law enforcement officer may advise the homeless person of its availability. If there is an "available shelter," and the shelter has been offered to the homeless person, and that person accepts this assistance, no arrest shall take place and arrangements shall be made to transport the homeless person to the shelter. Only if there is an "available shelter" and the homeless person refuses to

accept the shelter, or if the sole Available Shelter at the time is a shelter from which the homeless person is barred because of his or her own purposeful misconduct, criminal or otherwise, which occurred at that shelter, may the law enforcement officer arrest the homeless person for a "life sustaining conduct" misdemeanor. Required Records: (1) If a homeless person is transported to an available shelter," the law enforcement officer shall complete a Field Information Card, or its electronic equivalent;; (2) If an arrest is made, an Arrest Affidavit shall be completed. Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department. However, if the homeless person described above is observed committing one of the below listed "life sustaining conduct" misdemeanors, and the life sustaining conduct misdemeanor causes imminent threat of physical injury to the homeless person or other person(s), the law enforcement officer must warn the homeless person to stop, and, if they refuse to do so, may arrest them regardless of whether there is Available Shelter.

3. The "life sustaining conduct" misdemeanors referenced above are as follows:

a. Being in park after hours. Current Provisions:, □□38-3 & 1-13, City of Miami Code ("CMC"); □162.22, F.S. (1994);

b. Public nudity where necessary to carry on the daily necessities of life, such as bathing or responding to a call of nature. If the public nudity is done intentionally in plain view of others, the law enforcement officer may arrest the person regardless of whether there is an Available Shelter. Moreover, in no circumstance shall public nudity be allowed for a call of nature if there exists an open public restroom within one-quarter of a mile (1,320 feet) of the homeless person performing a call of nature. Current Provisions: □800.03. F.S. (1994), □37-1, 38-62, CMC.

c. ~~Fires in parks. Current provisions: 38-53 & 1-13, CMC; 162.22, F.S. (1994).;~~

d. Obstructing passage on sidewalks. Obstructing a street, road, or highway shall not be construed to be a "life sustaining conduct" misdemeanor within the meaning of this protocol except that, after one warning, no person or persons may lie on the sidewalk in a perpendicular fashion blocking the sidewalk or may obstruct a sidewalk in such a way as to endanger other persons by requiring them to

walk onto a street where, but for the obstruction, such persons would otherwise have been able to safely walk on the sidewalk. Current Provisions: □□54-1 to 54-3, 37-3, CMC; □316.2045, F.S. (1994).

e. Vehicles, living or sleeping in. Current Provision: □37-4,  
f. Loitering in Restrooms. Current Provision: □38-68, CMC;  
g. Littering, except, if within 300 feet of a usable trash receptacle, a law enforcement officer must warn the homeless person to stop, and, if they refuse to do so, may cite them regardless of whether there is Available Shelter. Current Provisions: □403.314, Fla. Stat.; □22-6, 38-17, 38-63 CMC; and

h. Camping in parks. Current Provision: □38-71, CMC;  
i. Use of facilities for other than intended purpose (e.g., sleeping on park bench). Current Provisions: □38-54, CMC;

j. ~~Temporary structures in park. Current Provisions: □38-52, CMC;~~

k. Trespass on "public property" other than structure or conveyance. Current Provision:, □810.09(1), Fla. Stat. Trespass on private property or an "exempt public property" is not a "life sustaining conduct" misdemeanor within the meaning of this protocol, and such violation should always be treated either as specified under paragraph D or E below. A homeless persons' presence interior of an "exempt public property" is not a trespass within the meaning of this paragraph where the homeless person's activities are reasonably related to the governmental business activities normally performed within these physical structures.

4. Nothing in this paragraph discussing "life sustaining conduct" misdemeanors shall prevent an immediate arrest under □800.04, F.S., entitled, "Lewd, lascivious, or indecent assault or act upon or in presence of a person ~~child~~," if a law enforcement officer has probable cause to make such an arrest.

D. Homeless Person Observed Violating a Misdemeanor (which is not classified above as "Life Sustaining Conduct"):

1. The "non-life sustaining conduct" misdemeanors are those which a homeless individual commits, but are not associated with "life sustaining activities," such as eating, sleeping, sitting, congregating, or walking in public.

2. If the homeless person described above is observed violating a misdemeanor (which is not classified in this Protocol as "life sustaining conduct"), the law enforcement officer may warn the homeless person to stop the unlawful conduct, or, if the officer deems it appropriate, the officer may detain or arrest the homeless person. A law enforcement officer may, in his or her discretion, approach the homeless person and advise him or her of shelter, services or assistance which is then currently available. If the law enforcement officer deems it appropriate, he or she may also offer to call ~~an outreach worker~~ a community outreach specialist to the scene so that the homeless person can be transported to an "available shelter" that is appropriate for the homeless person's needs at that time. Records required: (1) If a homeless person is transported to an available shelter, the law enforcement officer shall complete a Field Information Card, or its electronic equivalent; (2) If an arrest is made, an Arrest Affidavit shall be completed; (3) If the law enforcement officer warns the homeless person to stop the unlawful conduct, but no arrest is made, then the law enforcement officer shall complete a Field Information Card, or its electronic equivalent; (4) If an approach and advice concerning shelter, services or assistance occurs by a law enforcement officer, or if ~~an outreach worker~~ a community outreach specialist is called, the law enforcement officer shall complete a Field Information Card, or its electronic equivalent, except where a homeless person refuses assistance and has refused assistance in the past thirty days, a new Field Information Card, or its electronic equivalent, is not required to be completed for each encounter as long as the prior-filed Field Information Card, or its electronic equivalent, is updated with the new date of contact with the homeless person. Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.



E. Homeless Person Committing Felony Offense:

If a law enforcement officer has probable cause to believe that a homeless person is committing, or has committed, a felony, the law enforcement officer may detain or arrest the homeless person. Required Records: If an arrest is made, an Arrest Affidavit shall be completed. Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

F. Disposition of Personal Property Belonging to a Homeless Person who is Arrested .

1. The CITY shall respect the personal property of all homeless people. The Miami Police Department and all other Departments including but not limited to Parks and Recreation and Solid Waste) shall follow their own internal procedures for taking custody of personal property. In no event shall any city official or worker destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e., bedding or clothing and other belongings organized or packaged together in a way indicating it has not been abandoned), except as permissible by law and in accordance with the department's operating procedure, or if the property is contaminated or otherwise poses a health hazard or obvious safety issue to CITY workers or to members of the public. Notwithstanding any language in this Settlement Agreement to the contrary, the CITY is not responsible for taking custody of mattresses. When a homeless person is placed in a shelter, large and bulky items, which are not contaminated or otherwise pose a health hazard or obvious safety issue, and that are not abandoned, shall be secured by an outreach worker and maintained in accordance with existing outreach procedures.

2. The disposition of personal property shall never prevent a law enforcement officer from effectuating an arrest authorized under the previous sections of this protocol. However, the following safeguards shall be undertaken by the arresting officer or any other CITY agent or official to preserve the property of a homeless person, to the extent feasible:

a. The arresting officer shall always attempt to secure personal items such as identification, medicines and eyeglasses and other small items of importance identified by the arrestee, which are not large or bulky, in accordance with the police department's existing procedures;

b. The arresting officer shall ensure that large or bulky items (which are not contaminated or otherwise pose a health hazard or obvious safety issue to CITY officers or workers or to members of the public) are not abandoned at the point of arrest, but rather secured by an outreach worker and maintained in accordance with existing outreach procedures, or, if an outreach worker is unavailable, secured by the arresting officer until an outreach worker becomes available to assume its maintenance in accordance with existing outreach procedures.

#### VIII. Record Generation/Maintenance/Access

15. The CITY shall, within 30 days of the execution of this Settlement Agreement, adopt a procedure for monitoring and accounting for its police officers' encounters with the homeless persons. This procedure shall include the following:

(f) Records Generation – Field Information Cards, or their electronic equivalent, shall be available twice per calendar year to Plaintiffs' counsel at no cost for the six month period prior to the request, to monitor and insure compliance with the Settlement Agreement and Addendum.

#### X. Enforcement/Mediation

25b. The parties agree that the Addendum to the settlement agreement was made in good faith and measurable and observable improvements to the City's homeless population will take time. Therefore, no earlier than January 2, 2016, the parties may mediate further modifications of the settlement agreement and Addendum, including addressing issues related to the chronically homeless, in a non-binding mediation. If such matters are not resolved in mediation, either party may invoke the court's jurisdiction, with consent to having any matters heard before a U.S. Magistrate Judge, to seek further modifications to the settlement agreement given the established prima facie showing and finding by the court.

XII. Class Approval/Notice to Class Members

27b. Notice to the class of the Addendum shall be given by publication in The Miami Herald, El Nuevo Herald, and New Times, on three different days, including one weekend day, of three consecutive weeks, which shall not be less than a 1/4 page in the Local (Locales) section of each paper, to maximize the chance of actual notice to the class members. The costs of such notices shall be borne by the CITY. The notice shall advise class members of the status of this case, and describe, generally, the proposed Addendum. The notice shall be subject to court approval. Class members shall have 30 days following the final notice within which to file any written objections to the Addendum. The court shall convene a hearing at the convenience of its calendar, but at least 30 days thereafter to consider any such objections after which the court shall approve or disapprove the Addendum. The notice shall state the date, time, and location of this hearing. The Court shall set the date for the hearing to consider objections at the time it approves the content of the notice.

XIV. Court and City Commission Approval

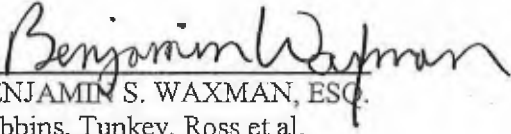
29b. This Addendum to the Settlement Agreement shall not be effective until approved by the City of Miami Commission and the Court. The Court shall retain jurisdiction to enforce the terms hereof.

XVI. Integration Clause


31b. The Addendum to the Settlement Agreement contains the entire agreement of the parties reached on this date and supersedes all previous oral or written representations or agreements concerning the Addendum. This Addendum to the Settlement Agreement shall not be supplemented by parol evidence.



DATED December 11, 2013.



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-2406~CIV~MORENO

MICHAEL POTTINGER, PETER  
CARTER AND BERRY YOUNG,

Plaintiffs,

vs.

CITY OF MIAMI,

Defendant.

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**Sections VII & VIII (Combined  
Text of 1998 Consent Decree  
and 2013 Modifications)**

**ADDENDUM TO SETTLEMENT AGREEMENT**

The Plaintiffs, MICHAEL POTTINGER, et al., and the class of Plaintiffs they represent (hereinafter collectively referred to as "Plaintiffs"), and the Defendant, THE CITY OF MIAMI (hereinafter "CITY"), by and through their respective undersigned counsel, agree to the following addendum to the settlement agreement effective October 1, 1998. Subject to the approval of this Court, except as herein modified, the terms and conditions of the Settlement Agreement effective October 1, 1998 shall remain in full force and effect. The language underlined constitutes additions to the settlement agreement and the language stricken constitutes deletions to the settlement agreement.

**VII. Law Enforcement Protocol**

10. Definition of "Homeless Person". An individual is considered a "homeless person" if he or she "lacks a fixed, regular, and adequate night time residence and has a primary night-time residency that is: (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations; (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term 'homeless person' does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a state law." 42 U.S.C. §11301, et seq. (1994). An

officer is allowed to make reasonable inquiry to make this determination. For purposes of this Addendum, any person identified as a registered sex offender under section 775.21 F.S. or sexual predator under section 775.215, F.S. or Sections 21-277 to 21-21285, Miami-Dade County Code, because they do not qualify for Available Shelter, is not afforded the protections under Section VII, Paragraph 14, of the Settlement Agreement.

11. Definition of "Available Shelter". An "available shelter" means a shelter for a period of at least 24 hours, with a bed or a mat, at least three inches thick, at no cost to the homeless person, within the territorial boundaries of the CITY or within one mile thereof, or if agreed to by the homeless person, within Miami-Dade County, that treats homeless persons with dignity and respect, imposes no religious requirements, and, unless agreed to by the homeless person, does not impose involuntary substance abuse or mental health treatment as a condition for shelter.

12. Definition of "Public Property". "Public Property" includes all property owned by any governmental entity (federal, state or local). "Public property" shall not include property which has become subject to a leasehold interest, management agreement or other possessory interest of a nongovernmental lessee, licensee or manager, which is operated as a private business. A public park shall always be considered public property within the meaning of this Settlement Agreement.

12a. Definition of "Exempt Public Property. The following are "exempt public properties": (1) City of Miami, City Hall, 3200 Pan American Drive; (2) Miami Riverside Center, 444 S.W. 2nd Avenue; (3) City of Miami Fire Stations; (4) City of Miami Police Stations; and (5) City of Miami NET (Neighborhood Enhancement Team) Offices.

13. **Purpose.** It is agreed that a specified protocol is necessary to guide Miami police officers in their interactions and contacts with homeless persons. The protocol is a prescribed response when the police observe specified conduct or activity.

14. Law Enforcement Protocol: The City hereby adopts a protocol to further protect the rights of homeless persons, by limiting the circumstances under which arrests can be made, including the handling of their personal property:

A. "Homeless Person Observed Not Engaging in Any Criminal Conduct:

There can be no arrest or detention. A law enforcement officer, social worker, or ~~CITY outreach worker~~ a community outreach specialist may approach the homeless person and advise him or her of shelter, services, or assistance which are then currently available. When the contact with the homeless person has been initiated by a "citizen's complaint," the law enforcement officer may, whenever appropriate, call for the assistance of ~~outreach worker~~ a community outreach specialist, who, if available, may begin the process of engaging the homeless person in a dialogue which is intended to advise the homeless person of shelter, services or assistance that is/are available. Required Records: (1) If such an approach and advice concerning shelter, services, or assistance occurs by a law enforcement officer, the law enforcement officer shall complete a Field Information Card, or its electronic equivalent. In the case of a homeless person who refuses and who has refused assistance in the

past thirty days, a new Field Information Card, or its electronic equivalent, is not required to be completed for each encounter as long as the prior-filed Field Information Card, or its electronic equivalent, is updated with the new date of contact with the homeless person. Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

B. Homeless Person Reasonably Believed to be Mentally Ill: Where a homeless person meets the criteria for involuntary examination under Florida Law (currently section 394.463, F.S.), "Baker Act," a law enforcement officer may, in his or her discretion, take the homeless person to a receiving the nearest receiving facility for involuntary examination. Required Records: If the homeless person is taken to a receiving the nearest receiving facility for involuntary examination, a copy of the forms required by section 394.463 (hereinafter "Baker Act Forms"), shall be filed with the nearest receiving facility ~~Mental Health Crisis Center at Jackson Memorial Hospital~~ and a Field Information Card, or its electronic equivalent, to include the name, date, location, and references that the person was Baker Acted shall be completed. Records Filing: A copy of all required records shall be filed with the applicable unit within the Miami Police Department.

C. Homeless Person Observed Violating a "Life Sustaining Conduct" Misdemeanor:

1. "Life sustaining conduct" misdemeanors are those which a homeless individual commits by the mere fact that he or she is without shelter, and must conduct life sustaining activities, such as eating, sleeping, sitting, congregating, or walking in public.

2. If the homeless person described above is observed committing one of the below listed "life sustaining conduct" misdemeanors, the law enforcement officer may warn the homeless person to stop the unlawful conduct. If there is no "available shelter," no warning shall be given. If there is an "available shelter," the law enforcement officer may advise the homeless person of its availability. If there is an "available shelter," and the shelter has been offered to the homeless person, and that person accepts this assistance, no arrest shall take place and arrangements shall be made to transport the homeless person to the shelter. Only if there is an "available shelter" and the homeless person refuses to

accept the shelter, or if the sole Available Shelter at the time is a shelter from which the homeless person is barred because of his or her own purposeful misconduct, criminal or otherwise, which occurred at that shelter, may the law enforcement officer arrest the homeless person for a "life sustaining conduct" misdemeanor. Required Records: (1) If a homeless person is transported to an available shelter, the law enforcement officer shall complete a Field Information Card, or its electronic equivalent; (2) If an arrest is made, an Arrest Affidavit shall be completed. Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department. However, if the homeless person described above is observed committing one of the below listed "life sustaining conduct" misdemeanors, and the life sustaining conduct misdemeanor causes imminent threat of physical injury to the homeless person or other person(s), the law enforcement officer must warn the homeless person to stop, and, if they refuse to do so, may arrest them regardless of whether there is Available Shelter.

3. The "life sustaining conduct" misdemeanors referenced above are as follows:

a. Being in park after hours. Current Provisions:  $\square\square38-3$  & 1-13, City of Miami Code ("CMC");  $\square162.22$ , F.S. (1994);

b. Public nudity where necessary to carry on the daily necessities of life, such as bathing or responding to a call of nature. If the public nudity is done intentionally in plain view of others, the law enforcement officer may arrest the person regardless of whether there is an Available Shelter. Moreover, in no circumstance shall public nudity be allowed for a call of nature if there exists an open public restroom within one-quarter of a mile (1,320 feet) of the homeless person performing a call of nature. Current Provisions:  $\square800.03$ , F.S. (1994),  $\square37-1$ , 38-62, CMC.

c. ~~Fires in parks. Current provisions: 38-53 & 1-13, CMC; 162.22, F.S. (1994);~~

d. Obstructing passage on sidewalks. Obstructing a street, road, or highway shall not be construed to be a "life sustaining conduct" misdemeanor within the meaning of this protocol except that, after one warning, no person or persons may lie on the sidewalk in a perpendicular fashion blocking the sidewalk or may obstruct a sidewalk in such a way as to endanger other persons by requiring them to

walk onto a street where, but for the obstruction, such persons would otherwise have been able to safely walk on the sidewalk. Current Provisions:  $\square$ 54-1 to 54-3, 37-3, CMC;  $\square$ 316.2045, F.S. (1994).

e. Vehicles, living or sleeping in. Current Provision:  $\square$ 37-4,  
f. Loitering in Restrooms. Current Provision:  $\square$ 38-68, CMC;  
g. Littering, except, if within 300 feet of a usable trash receptacle, a law enforcement officer must warn the homeless person to stop, and, if they refuse to do so, may cite them regardless of whether there is Available Shelter. Current Provisions:  $\square$ 403.314, Fla. Stat.;  $\square$ 22-6, 38-17, 38-63 CMC; and

h. Camping in parks. Current Provision:  $\square$ 38-71, CMC;  
i. Use of facilities for other than intended purpose (e.g., sleeping on park bench). Current Provisions:  $\square$ 38-54, CMC;

j. ~~Temporary structures in park. Current Provisions:  $\square$ 38-52, CMC;~~

k. Trespass on "public property" other than structure or conveyance. Current Provision,  $\square$ 810.09(1), Fla. Stat. Trespass on private property or an "exempt public property" is not a "life sustaining conduct" misdemeanor within the meaning of this protocol, and such violation should always be treated either as specified under paragraph D or E below. A homeless persons' presence interior of an "exempt public property" is not a trespass within the meaning of this paragraph where the homeless person's activities are reasonably related to the governmental business activities normally performed within these physical structures.

4. Nothing in this paragraph discussing "life sustaining conduct" misdemeanors shall prevent an immediate arrest under  $\square$ 800.04, F.S., entitled, "Lewd, lascivious, or indecent assault or act upon or in presence of a person ~~child~~," if a law enforcement officer has probable cause to make such an arrest.

D. Homeless Person Observed Violating a Misdemeanor (which is not classified above as "Life Sustaining Conduct"):



1. The "non-life sustaining conduct" misdemeanors are those which a homeless individual commits, but are not associated with "life sustaining activities," such as eating, sleeping, sitting, congregating, or walking in public.

2. If the homeless person described above is observed violating a misdemeanor (which is not classified in this Protocol as "life sustaining conduct"), the law enforcement officer may warn the homeless person to stop the unlawful conduct, or, if the officer deems it appropriate, the officer may detain or arrest the homeless person. A law enforcement officer may, in his or her discretion, approach the homeless person and advise him or her of shelter, services or assistance which is then currently available. If the law enforcement officer deems it appropriate, he or she may also offer to call ~~an outreach worker~~ a community outreach specialist to the scene so that the homeless person can be transported to an "available shelter" that is appropriate for the homeless person's needs at that time.

Records required: (1) If a homeless person is transported to an available shelter, the law enforcement officer shall complete a Field Information Card, or its electronic equivalent; (2) If an arrest is made, an Arrest Affidavit shall be completed; (3) If the law enforcement officer warns the homeless person to stop the unlawful conduct, but no arrest is made, then the law enforcement officer shall complete a Field Information Card, or its electronic equivalent; (4) If an approach and advice concerning shelter, services or assistance occurs by a law enforcement officer, or if ~~an outreach worker~~ a community outreach specialist is called, the law enforcement officer shall complete a Field Information Card, or its electronic equivalent, except where a homeless person refuses assistance and has refused assistance in the past thirty days, a new Field Information Card, or its electronic equivalent, is not required to be completed for each encounter as long as the prior-filed Field Information Card, or its electronic equivalent, is updated with the new date of contact with the homeless person.

Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

E. Homeless Person Committing Felony Offense:

If a law enforcement officer has probable cause to believe that a homeless person is committing, or has committed, a felony, the law enforcement officer may detain or arrest the homeless person. Required Records: If an arrest is made, an Arrest Affidavit shall be completed. Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

F. Disposition of Personal Property Belonging to a Homeless Person who is Arrested .

1. The CITY shall respect the personal property of all homeless people. The Miami Police Department and all other Departments including but not limited to Parks and Recreation and Solid Waste) shall follow their own internal procedures for taking custody of personal property. In no event shall any city official or worker destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e., bedding or clothing and other belongings organized or packaged together in a way indicating it has not been abandoned), except as permissible by law and in accordance with the department's operating procedure, or if the property is contaminated or otherwise poses a health hazard or obvious safety issue to CITY workers or to members of the public. Notwithstanding any language in this Settlement Agreement to the contrary, the CITY is not responsible for taking custody of mattresses. When a homeless person is placed in a shelter, large and bulky items, which are not contaminated or otherwise pose a health hazard or obvious safety issue, and that are not abandoned, shall be secured by an outreach worker and maintained in accordance with existing outreach procedures.

2. The disposition of personal property shall never prevent a law enforcement officer from effectuating an arrest authorized under the previous sections of this protocol. However, the following safeguards shall be undertaken by the arresting officer or any other CITY agent or official to preserve the property of a homeless person, to the extent feasible:

a. The arresting officer shall always attempt to secure personal items such as identification, medicines and eyeglasses and other small items of importance identified by the arrestee, which are not large or bulky, in accordance with the police department's existing procedures;

b. The arresting officer shall ensure that large or bulky items (which are not contaminated or otherwise pose a health hazard or obvious safety issue to CITY officers or workers or to members of the public) are not abandoned at the point of arrest, but rather secured by an outreach worker and maintained in accordance with existing outreach procedures, or, if an outreach worker is unavailable, secured by the arresting officer until an outreach worker becomes available to assume its maintenance in accordance with existing outreach procedures.

#### VIII. Record Generation/Maintenance/Access

15. The CITY shall, within 30 days of the execution of this Settlement Agreement, adopt a procedure for monitoring and accounting for its police officers' encounters with the homeless persons. This procedure shall include the following:

(a). generating form records of all City of Miami police arrests and detentions of homeless persons, and either entering them into a computer database or creating a paper data base.

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(b). generating similar form records of all City of Miami police encounters with homeless persons as described in the above protocol and either entering them into a computer database or creating a paper data base. This Settlement Agreement shall not create any obligation on the part of a homeless person to produce any information to a law enforcement officer that would not otherwise be required of any other person.

(c). The records and statistics such as the number of arrests, detentions, and encounters which result in a warning or a referral; the nature of the underlying conduct; the ordinance or statute which formed the basis of the arrest, detention, or warning; and the number of actual referrals to homeless programs, if generated by the CITY, shall be provided to the members of the "Advisory Committee" (set forth below) as requested to monitor and ensure compliance with this Settlement Agreement."

(d). Within the limitations of the Florida Public Records Act, Chapter 119, Fla. Stat., access to other records, documents, and information relevant to this Settlement Agreement shall be readily available.

(e). The CITY shall preserve all existing arrest records relevant to class members making claims under the Compensatory Damages provisions of this Settlement Agreement for such period of time as is necessary to accomplish that goal.

(f). Records Generation -- Field Information Cards, or their electronic equivalent, shall be available twice per calendar year to Plaintiffs' counsel at no cost for the six month period prior to the request, to monitor and insure compliance with the Settlement Agreement and Addendum.

## Homeless in Miami? If you are, your *Pottinger* rights against arrest while living on the streets may soon be changed.

**You can voice your opinion to the federal court in Miami before it decides whether to approve the proposed changes. Here's how.**

**Your *Pottinger* rights now:** If you're homeless, Miami police must offer you the chance to go to a shelter in Miami instead of arresting you for certain offenses. These currently include:

- being in the park after hours or camping in parks
- building fires in parks or putting up a tent in a park
- lying or sleeping on the sidewalks or on park benches
- trespassing on public property
- littering
- loitering in restrooms
- living in a vehicle

City police, the "Green Shirts," and other City officials must also respect your property rights.

**What the proposed changes to *Pottinger* may mean for you:**

- *For most homeless people, Pottinger rights will remain largely the same: City of Miami Police must offer you the chance to go to a shelter instead of arresting you for certain offenses.*
- *If the court approves the proposed changes, some rights against arrest will be eliminated or narrowed. These are the main changes:*
  - You'll be subject to arrest *without* being offered the chance to go to a shelter if, after a warning by a police officer, you:
    - litter within 300 feet of a usable trash can, or
    - block a sidewalk so that others have to walk in the street, or
    - commit a minor offense in a way that poses an imminent threat of physical injury to you or others.
  - You'll be subject to arrest, with *no* warning by a police officer and *without* being offered the chance to go to a shelter, if you:
    - build a fire in a public park or put up a tent in a park, or
    - violate public nudity laws intentionally in plain view or don't use an open public restroom within a quarter mile.
  - The shelter you are offered instead of arrest may have a mat instead of a bed to sleep on.
- *City officials can't take your belongings unless they pose an obvious safety hazard (for example, leaving an unattended backpack in front of a courthouse).*
- *If you are homeless and registered as a sex offender or predator, you will no longer be afforded the Pottinger protections.*
- *The ACLU will have better access to records to monitor City compliance.*

### **Pottinger v. City of Miami (No. 88-2406-CIV-FAM)**

- In 1988 the American Civil Liberties Union (ACLU) sued the City of Miami on behalf of homeless people in Miami.
- In 1992 the U.S. District Court ruled that the City of Miami had violated homeless people's constitutional rights.
- In 1998 the ACLU and the City settled the case. *The Pottinger settlement is still in effect today.*
- In 2013 the City proposed changes to the *Pottinger* settlement. The ACLU and the City have now agreed to a set of changes. The Court must review them before they can take effect.
- **2/28/14 at 10:00 am:** public hearing on the proposals before U.S. District Court Judge Moreno, Courtroom 13-3, 400 N. Miami Ave, Miami FL 33128.

**If you agree with these changes you don't need to do anything.**

**If you're homeless in Miami and want to object to any of these changes, you may file written objections to them by Feb. 14, 2014** with the Clerk of the U.S. District Court. (See the back of this sheet for information on how to do so.)

**If you're homeless in Miami you may appear at the Feb. 28, 2014 hearing at 10:00 am** before Judge Moreno, U.S. District Court, Courtroom 13-3, 400 N. Miami Avenue.

**More information from:**

- The ACLU, 4500 Biscayne Blvd., #340, Miami, FL 33137, [aclufl@aclufl.org](mailto:aclufl@aclufl.org), 786-363-2700
- Most homeless shelters in Miami.
- [aclufl.org/pottinger](http://aclufl.org/pottinger): This website has times and places of public information sessions at shelters, and a complete copy of the ACLU-City agreement.

NOTE: You *must* fill out all items in **bold**.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

**Sign your name here.** → \_\_\_\_\_

**Homeless in Miami? If you are, your *Pottinger* rights against arrest while living on the streets may soon be changed.**

**You can voice your opinion to the federal court in Miami before it decides whether to approve the proposed changes. Here's how.**

**Your *Pottinger* rights now:**

If you're homeless, Miami police must offer you the chance to go to a shelter in Miami instead of arresting you for certain offenses. These currently include:

- being in the park after hours or camping in parks
- building fires in parks or putting up a tent in a park
- lying or sleeping on the sidewalks or on park benches
- trespassing on public property
- littering

City police, the "Green Shirts," and other City officials must also respect your property rights.

**Pottinger v. City of Miami  
(No. 88-2406-CIV-FAM)**

- In 1988 the American Civil Liberties Union (ACLU) sued the City of Miami on behalf of homeless people in Miami.
- In 1992 the U.S. District Court ruled that the City of Miami had violated homeless people's constitutional rights.
- In 1998 the ACLU and the City settled the case. *The Pottinger settlement is still in effect today.*
- In 2013 the City proposed changes to the *Pottinger* settlement. The ACLU and the City have now agreed to a set of changes. The Court must review them before they can take effect.
- **2/28/14 at 10:00 am:** public hearing on the proposals before U.S. District Court Judge Moreno, Courtroom 13-3, 400 N. Miami Ave, Miami FL 33128.

**What the proposed changes to *Pottinger* may mean for you:**

- *For most homeless people, Pottinger rights will remain largely the same: City of Miami Police must offer you the chance to go to a shelter instead of arresting you for certain offenses.*
- *If the court approves the proposed changes, some rights against arrest will be eliminated or narrowed. These are the main changes:*
  - You'll be subject to arrest *without* being offered the chance to go to a shelter if, after a warning by a police officer, you:
    - litter within 300 feet of a usable trash can, or
    - block a sidewalk so that others have to walk in the street, or
    - commit a minor offense in a way that poses an imminent threat of physical injury to you or others.
  - You'll be subject to arrest, with *no* warning by a police officer and *without* being offered the chance to go to a shelter, if you:
    - build a fire in a public park or put up a tent in a park, or
    - violate public nudity laws intentionally in plain view or don't use an open public restroom within a quarter mile.
  - The shelter you are offered instead of arrest may have a mat instead of a bed to sleep on.
- *City officials can't take your belongings unless they pose an obvious safety hazard (for example, leaving an unattended backpack in front of a courthouse).*
- *If you are homeless and registered as a sex offender or predator, you will no longer be afforded the Pottinger protections.*
- *The ACLU will have better access to records to monitor City compliance.*

**If you are homeless in Miami you may file written objections to the proposed changes by Feb. 14, 2014** with the Clerk of the U.S. District Court at the address in the box above (include case name & no.). You may also appear at the **Feb. 28, 2014 hearing**. If you agree with these changes you don't need to do anything.

**More information from:** ACLU, 4500 Biscayne Blvd., #340, Miami, FL 33137, [aclufl@aclufl.org](mailto:aclufl@aclufl.org), 786-363-2700, and at most homeless shelters in Miami. Check [aclufl.org/pottinger](http://aclufl.org/pottinger) for times and places of public information sessions at shelters; for a complete copy of the ACLU-City agreement; and for more information on how to file an objection.

# Homeless in Miami?

## These are your *Pottinger* rights.

**If you are homeless in the City of Miami, you have certain rights.**

**1. Police officers must first offer to take you to a homeless shelter before arresting you for certain minor crimes. If you refuse, you can be arrested. Those crimes are:**

- Being in a public park after closing hours
- Camping in a public park (so long as you don't use a tent)
- Trespassing on public property (owned by the government, not by a private individual or business)
- Loitering in restrooms
- Living in a car
- Partially blocking the sidewalk (as long as you leave enough room so others don't have to step into the street)
- Bathing yourself in public
- Going to the bathroom in public, except if you're within a quarter mile (1320 feet; typically 3-4 blocks) of an open public bathroom (meaning in a government building) or you're in plain view of other people. *So if you're that close to an open public bathroom, you have to use it. Otherwise, try to go only in out-of-the-way places.*

**2. Police officers must first WARN you to stop committing certain crimes. If you refuse to stop, you can be arrested. Those crimes are:**

- Littering within 300 feet of a usable trash can. *So if you're close to a trash can, make sure you use it for anything you throw away.*
- Fully blocking the sidewalk so that others have to walk out onto the street.
- Committing any crime (including those listed above) in a way that may cause someone to be physically hurt.

**3. If you are a registered sex offender or predator, none of the above protections apply to you. You can be arrested for any crime without a warning and without an offer of shelter.**

**4. Police officers and City Officials ("Green Shirts") cannot take your property unless it's an obvious safety issue or you've abandoned it.**

- *So be sure to store your property neatly and in an out-of-the-way place.*
- If you accept an offer of shelter, you will be allowed to bring your property with you.
- If you're arrested, police must hold on to your property so that you can get it back when released. The police do not have to keep mattresses.

**What if I believe my *Pottinger* rights have been violated?**

Fill out the form on the back of this flyer and drop it off at the location listed on the back.





## Pottinger Violation Complaint Form

**My Name** (Print Neatly): \_\_\_\_\_

**I live in the City of Miami:**   ☐ Yes   ☐ No

**I am homeless:**   ☐ Yes   ☐ No      **Telephone/other contact:** \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Time: \_\_\_\_\_ Where it happened: \_\_\_\_\_

What happened: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I declare that the facts stated in this complaint form are true to the best of my knowledge and belief.

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ **Sign your name here.** → \_\_\_\_\_

### Include in your statement

- Identifying information for police or City officials such as:
  - Police Officer names or badge numbers.
  - Names of Green Shirts or Other City Officials.
  - Car number of any police or City car (or truck).
- Why they approached you; what they did or said.
- What you said or did.
- If possible, names/contact info of witnesses.

### Take or mail this completed form to:

ACLU of Florida  
4500 Biscayne Blvd  
Suite 340  
Miami, FL 33137

*The ACLU will attempt to contact you within 2 weeks.*

## List of Downtown Miami Public Bathroom Locations

### \*Bayfront Park, 301 Biscayne Blvd

Public Bathrooms: 9:00 a.m. to 6 p.m. 7 Days

Where: Klipsch Amphitheater

### Bicentennial Museum Park, 1075 Biscayne Blvd

Public Bathrooms: 9:00 a.m. to 9:00 p.m. 7 Days

Where: South end of park in front of American Airlines Arena

### Margaret Pace Park, 1075 N Bayshore Drive

Public Bathrooms: 7:00 a.m. to 10:00 p.m. (Mon thru Fri)/  
Weekends, 9:00 a.m. to 6:00 p.m.

Where: Free-standing building on NW park entrance.

### Gibson Park, 350 NW 13th Street

Public Bathrooms: 9:00 a.m. to 6:00 p.m. 7 Days

Where: Culmer/Overtown Library Branch and building  
next to swimming pool.

### \*Miami Police Department (MPD), 400 NW 2nd Avenue

Public Bathrooms: 24 Hours (inside police station)

### Lummus Park, 404 NW 3rd Street

Public Bathrooms: 9:00 a.m. to 5:30 p.m. Mon thru Fri

Where: Building in park.

### Miami Dade Government Center, 111 NW 1st Street

Public Bathrooms: 7:00 a.m. to 6:00 p.m. Mon thru Fri Where:  
2nd floor of Government Center and Clark Center (accessi-  
ble from station via corridor).

\*Miami Dade Public Library, 101 West Flagler Street Pub-  
lic Restrooms: 10:00 a.m. to 6:00 p.m. Mon thru Fri Where:  
Inside Library and on plaza outside library.

### \*Fort Dallas Park, 60 SE 4th Street

Public Bathrooms: Sunrise to 9:00 p.m. 7 Days

Where: Free-standing yellow building

*This list is based on information supplied by the City of Miami. Although the police may consider bathrooms marked with \* public, these locations may not in fact be easily accessible, if at all, during operating hours. The City is also planning to make two portable toilets available downtown; the location and starting date have not yet been announced.*

Attach additional sheets if necessary.

Section 205 of the Convention Act, however, creates an exception to this general rule and provides for the removal of cases governed by the New York Convention. *See* 9 U.S.C. § 205. Specifically, § 205 states that, “[w]here the subject matter of an action or proceeding pending in a State court *relates to an arbitration agreement or award falling under the [New York] Convention*,” a defendant may “remove such action or proceeding to the district court of the United States.” *Id.* (emphasis added). Thus, the Convention Act permits a defendant to remove a case relating to an arbitration agreement covered by the New York Convention. *See Bautista*, 396 F.3d at 1294.

Here, Escobar raised claims relating to an injury suffered during his employment with Celebration. Escobar’s employment contract required arbitration of all claims “arising out of or in connection with” Escobar’s employment. The subject matter of Escobar’s action in state court therefore related to his arbitration agreement. Furthermore, as explained *supra*, Part V, Escobar’s arbitration agreement met the four jurisdictional requirements and is governed by the New York Convention.

Accordingly, Escobar’s Jones Act claims brought in state court were subject to removal, pursuant to § 205, *see Bautista*, 396 F.3d at 1294, and the district court did not err in denying Escobar’s motion to remand.

## XI. CONCLUSION

For the all the reasons stated above, the district court properly (1) granted Celebration’s motion to compel arbitration and dismiss the complaint and (2) denied Escobar’s

ery for personal injury to, or death of, a railway employee apply to an action” brought under the Jones Act).

bar’s motion to remand the case to state court.<sup>20</sup>

**AFFIRMED.**



**Michael POTTINGER, et al., Plaintiffs,**

**David Peery, Plaintiff–Appellant,**

**v.**

**CITY OF MIAMI, Defendant–Appellee.**

**No. 14–13287.**

United States Court of Appeals,  
Eleventh Circuit.

Nov. 10, 2015.

**Background:** Following settlement of § 1983 class action, alleging that city police department had custom and policy of arresting, harassing, and otherwise interfering with homeless people, and modification of the parties’ agreement, the class representative moved for additional attorney fees for work performed by class counsel during the modification process. The United States District Court for the Southern District of Florida, Federico A. Moreno, J., 2014 WL 2890061, denied motion. Class representative appealed.

**Holding:** The Court of Appeals, Jordan, Circuit Judge, held that class counsel was not entitled to an award of attorney fees under § 1988 for legal work performed in connection with modification of agreement. Affirmed.

**20.** Because all of Escobar’s affirmative defenses to his arbitration agreement are premature at this arbitration-enforcement stage, we need not consider the applicability of the severance clause in his employment contract.

**1. Compromise and Settlement** ¶72

A district court's approval of a settlement agreement functions as the equivalent of the entry of a consent decree.

**2. Compromise and Settlement** ¶11**Federal Courts** ¶3611(1)

The Court of Appeals exercises plenary review in interpreting a settlement agreement which has become the functional equivalent of a consent decree through judicial approval.

**3. Compromise and Settlement** ¶11**Federal Civil Procedure** ¶2397.5

In cases governed by federal law, settlement agreements and consent decrees are interpreted according to principles of contract law.

**4. Contracts** ¶147(2)

Agreements are construed to effectuate the intent of the parties, and such intent is derived from the objective meaning of the words used.

**5. Civil Rights** ¶1478

In civil rights cases brought pursuant to § 1983, an award of attorney fees is governed by § 1988. 42 U.S.C.A. §§ 1983, 1988.

**6. Civil Rights** ¶1482

Generally, a plaintiff who prevails in a § 1983 action is entitled to an award of reasonable attorney fees unless special circumstances would render such an award unjust. 42 U.S.C.A. § 1983.

**7. Civil Rights** ¶1482

A consent decree constitutes a material alteration of the legal relationship of the parties, as necessary to permit an award of attorney fees under § 1988. 42 U.S.C.A. § 1988.

**8. Civil Rights** ¶1482

A settlement agreement which the district court retains jurisdiction to enforce constitutes a material alteration of the legal relationship of the parties, as neces-

sary to permit an award of attorney fees under § 1988. 42 U.S.C.A. § 1988.

**9. Civil Rights** ¶1479**Compromise and Settlement** ¶9, 21

Section 1988 permits settlement agreements conditioned on the waiver of attorney fees, and one circumstance justifying the denial of fees is where the plaintiff through a settlement or consent order agreed to compromise his right to pursue subsequent fees. 42 U.S.C.A. § 1988.

**10. Compromise and Settlement** ¶11

A settlement agreement which is the functional equivalent of a consent decree should be interpreted as written.

**11. Civil Rights** ¶1482**Compromise and Settlement** ¶72

Class counsel was not entitled to an award of attorney fees under § 1988 for legal work performed in connection with modification of prior settlement agreement approved by District Court, in § 1983 class action, alleging that city police department had custom and policy of arresting, harassing, and otherwise interfering with homeless people, where settlement agreement allowed for modification of the agreement, but specifically limited any award of future attorney fees to enforcement proceedings, and no enforcement proceedings took place. 42 U.S.C.A. §§ 1983, 1988.

**12. Federal Civil Procedure** ¶2397.5

It is the agreement of the parties, rather than the force of the law that creates the obligations embodied in a consent decree.

---

Kelley S. Roark, Ritter Zaretsky Lieber & Jaime, LLP, Arthur J. Rosenberg, Florida Legal Services, Inc., Dante Pasquale Trevisani, Benjamin Samuel Waxman,

Robbins Tunkey Ross Amsel Raben & Waxman, PA, Miami, FL, Stephen J. Schnably, University of Miami School of Law Law Lib G472, Coral Gables, FL, for Plaintiff–Appellant.

Forrest Lee Andrews, Warren Bittner, Office of the Miami City Attorney, Scott Allan Cole, Thomas Emerson Scott, Jr., Cole Scott & Kissane, PA, Kendall Coffey, Coffey Burlington, PL, Miami, FL, for Defendant–Appellee.

Appeal from the United States District Court for the Southern District of Florida. D.C. Docket No. 1:88–cv–02406–FAM.

Before JORDAN and JULIE CARNES, Circuit Judges, and GOLDBERG,\* Judge.

JORDAN, Circuit Judge:

In the hierarchy of law, language is king. Words matter in constitutions, treaties, statutes, rules, cases, and contracts. And, as seen in this case, they matter in civil rights settlement agreements which, once judicially approved, become consent decrees.

David Peery, on behalf of a class, asks us to award his counsel attorneys’ fees for opposing modifications proposed by the City of Miami to such an agreement. We decline to do so because the parties’ agreement limited future attorneys’ fees to enforcement proceedings. Given that modification proceedings do not trigger an award of attorneys’ fees under the agreement, we affirm the district court’s denial of fees.

## I

This case has a prolonged history. We summarize only what is necessary to provide context for our analysis.

More than 25 years ago, Michael A. Pottinger, as representative of a class of

homeless persons, filed a lawsuit against the City of Miami under 42 U.S.C. § 1983, alleging that the City’s police department had “a custom, practice and policy of arresting, harassing and otherwise interfering with homeless people for engaging in basic activities of daily life . . . in the public places where they are forced to live.” *Pottinger v. City of Miami*, 810 F.Supp. 1551, 1554 (S.D.Fla.1992). Mr. Pottinger sought an injunction against the City to prohibit its police from arresting homeless persons who engaged in “life-sustaining conduct” in public and from seizing and destroying their property. *See id.* The district court found the City liable and granted Mr. Pottinger’s request for injunctive relief. *See id.* at 1584 (detailing the specific relief granted).

The City appealed, challenging the basis and scope of the injunction. In December of 1994, following oral argument, we remanded the case to allow the district court to “issue appropriate clarifying language to guide the [C]ity in its determination of the scope of its duties under the injunction, and [to] consider whether its injunction should be modified in light of . . . events [that transpired subsequent to its order granting the injunction].” *Pottinger v. City of Miami*, 40 F.3d 1155, 1157 (11th Cir.1994). On remand, the district court conducted an evidentiary hearing and ruled that the injunction would remain in effect because the circumstances on the ground had not changed significantly. *See* D.E. 360 at 11.

[1] Once again the City appealed. We heard oral argument in January of 1996, and instructed the parties to try to settle their dispute. *See Pottinger v. City of Miami*, 76 F.3d 1154 (11th Cir.1996). After negotiating for nearly two years, the parties entered into a settlement agree-

\* Honorable Richard W. Goldberg, Judge of the United States Court of International Trade,

sitting by designation.

ment which the district court subsequently approved. *See* D.E. 397 (joint motion to approve settlement agreement); D.E. 398 (final order approving settlement agreement, retaining jurisdiction, and dismissing the case). The district court's approval of the parties' agreement functioned as the equivalent of the entry of a consent decree. *See Smalbein ex rel. Estate of Smalbein v. City of Daytona Beach*, 353 F.3d 901, 905 (11th Cir.2003) ("A formal consent decree is unnecessary because the . . . explicit retention of jurisdiction over the terms of the settlement [is] the 'functional equivalent of an entry of a consent decree.'") (citation omitted).<sup>1</sup>

As part of their settlement, the parties agreed that the lawsuit and then-pending appeals would be dismissed "without costs and attorneys['] fees (except such attorneys['] fees as are specifically provided for [in the agreement] ).]" D.E. 464-1 at 2. Paragraph 25 of the agreement sets forth the parties' resolution of attorneys' fees:

[T]he City shall pay to the Plaintiffs' attorneys the sum of \$900,000 . . . as and for attorneys['] fees and costs, . . . as a part of the comprehensive settlement to be adopted through the implementation of this Settlement Agreement. Additionally, said payment is made to conclude all claims for attorneys['] fees in the underlying litigation, including pending appeals, and in regard to all other matters connected with this Settlement Agreement, except enforcement proceedings, should such become necessary after non-binding mediation as provided below.

*Id.* at 13 (emphasis added).

Like paragraph 25, paragraph 25a of the agreement, entitled "Enforcement/Media-

tion," requires the parties to submit to non-binding mediation prior to initiating an action to enforce the settlement agreement:

*Prior to any party seeking court enforcement against any other party to this Settlement Agreement, the parties shall attempt to informally mediate a dispute in a non-binding mediation. . . . This requirement to mediate prior to seeking court enforcement shall not prevent a party from seeking immediate court enforcement if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss or damage will result to the aggrieved party before the aggrieved party and the other party can conduct mediation[.]*

*Id.* at 13-14 (emphasis added).

Paragraph 30, entitled "Modification," states that the settlement agreement "may be modified by written agreement of the parties, or upon a showing of a significant change in circumstances warranting revision of the Agreement in a way suitably tailored to the change of circumstances, but in either event, only after approval by the Court." *Id.* at 14. Paragraph 30 does not provide for the award of fees in modification proceedings.

## II

In October of 2000, the parties filed a joint motion to modify the settlement agreement. *See* D.E. 458. The agreement had established a "Start Off Fund" in order to compensate qualified class members. *See* D.E. 464-1 at 8. The payments were to be made within two years, *see id.* at 13, but they started later than expected,

1. We therefore refer to the document approved by the district court interchangeably as the settlement agreement or consent decree, and draw upon cases dealing with both settlement agreements and consent decrees.

*See, e.g., Waters v. Int'l Precious Metals Corp.*, 237 F.3d 1273, 1276 (11th Cir.2001) (citing consent decree case in appeal involving interpretation of settlement agreement approved by district court).

and the parties asked the district court to modify the agreement to allow payments to continue until the fund was exhausted. *See* D.E. 458 at 2. The district court did as the parties requested. *See* D.E. 459. No one sought attorneys' fees for the work performed during the 2000 modification process.

### A

Over a decade later, in September of 2013, the City invoked paragraph 30 of the settlement agreement and filed a "Motion for Limited Modification." *See* D.E. 464. According to the City, there had been "vast improvements in programs and services for the homeless," but those improvements did not ameliorate problems among two subgroups of the homeless population—"the chronically homeless and sexual predators." *Id.* at 4. From the City's perspective, modifications to the agreement were necessary "so [the] needs of these [sub]groups and the public at large [could] be met." *Id.* The City stated that it was "not seeking an Order to have the entire Agreement set aside." *Id.*

The City grouped its proposed modifications into three major categories: the chronically homeless; the law enforcement protocol as it pertained to shelters; and sexual predators. *See* D.E. 464 at 18. First, arguing that they were "treatment resistant," the City proposed exempting the chronically homeless (defined by the City as those "who refuse[] services on three separate occasions within a 189-day period," with "multiple refusals in a 24-hour period" counting only as a single refusal) from the definition of homeless persons. Second, the City wanted to change the definition of an "available shelter" to a facility which could accommodate the homeless for a minimum of 24 hours (as opposed to the 48 hours set forth in the agreement) and which had mats (instead of beds) for the homeless to sleep on. The City also wished to expand the territorial

boundaries of available shelters and to count facilities as shelters even if they imposed involuntary substance abuse or mental health treatment. Third, the City sought to exclude sexual predators from the class of homeless persons under the agreement. Fourth, the City requested that police officers be allowed to arrest homeless persons for "life-sustaining conduct" misdemeanors that endangered the health, safety, and welfare of such persons or the public, regardless of shelter availability. Fifth, the City recommended reducing the number of activities constituting "life-sustaining conduct" for which an arrest was prohibited unless a shelter was available, offered, and refused.

Mr. Peery, representing the class of plaintiffs, filed a response opposing the motion, arguing that, in effect, the City was attempting to terminate the settlement agreement as to the "chronically homeless" and registered sex offenders. *See* D.E. 477 at 2. Mr. Peery also maintained that the City failed to make out a *prima facie* case for the requested modifications. *See, e.g., id.* at 3, 33.

### B

In October of 2013, the district court held a hearing on the City's motion for modification and suggested that the parties mediate their dispute. *See* D.E. 508 at 45–51. The district court appointed a mediator, and two months later the parties filed a joint motion to approve the so-called 2014 addendum to the original settlement agreement. The district court granted the parties' motion. *See* D.E. 525 (joint motion); D.E. 544 (order).

In the 2014 addendum approved by the district court, the parties agreed to some of the modifications proposed by the City. The major changes were that persons who were registered sex offenders or sexual predators under certain Florida statutes

were no longer afforded some of the protections provided by the original settlement agreement; a facility was now considered a shelter if it could accommodate the homeless for a minimum of 24 hours and had mats at least three inches thick for the homeless to sleep on; starting a fire in a park no longer constituted “life-sustaining conduct;” and arrests could be now be made for “life-sustaining conduct” misdemeanors after a warning even if a shelter was available, but only if the conduct involved “imminent threat of physical injury.” See D.E. 525-1 at 2-5. Some of the City’s requested modifications, such as those relating to the chronically homeless, were not agreed to by the parties and did not become part of the 2014 addendum. See *id.* at 1-2.

Significantly, the 2014 addendum did not change the attorneys’ fees language in paragraph 25 of the original settlement agreement. Nor did it alter paragraphs 25a (“Enforcement/Mediation”) or 30 (“Modification”) of that agreement. The 2014 addendum did, however, include a new paragraph 25b, which recognizes the fluidity of the homeless situation in Miami, and allows the parties to “mediate further modifications” to the settlement agreement and the 2014 addendum. See D.E. 525-1 at 8. Paragraph 25b provides that if future issues “are not resolved in mediation, either party may invoke the court’s jurisdiction . . . to seek further modifications” of the settlement agreement. *Id.*

### C

Following the district court’s approval of the 2014 addendum, Mr. Peery, as the class representative, moved for \$476,094.55 in attorneys’ fees for the work performed by counsel during the modification process. See D.E. 553 at 2. The district court denied Mr. Peery’s motion, ruling that paragraph 25 of the settlement agreement permits attorneys’ fees for enforcing the agreement, but not for opposing modifications to

the agreement. See D.E. 557 at 2-3. The district court also found that Mr. Peery was not the prevailing party as to the City’s motion for modification because paragraph 25 precluded such a finding and because Mr. Peery “settled short of a [c]ourt ruling on the [City’s] motion.” *Id.* at 3. Mr. Peery now appeals the denial of fees.

### III

[2-4] We exercise plenary review in interpreting a settlement agreement which has become the functional equivalent of a consent decree through judicial approval. See *Waters*, 237 F.3d at 1277; *Turner v. Orr*, 759 F.2d 817, 821 (11th Cir.1985). In cases governed by federal law, settlement agreements and consent decrees are interpreted according to “principles of contract law.” *Waters*, 237 F.3d at 1277 (settlement agreements); *Jacksonville Branch, NAACP v. Duval Cty. Sch. Bd.*, 978 F.2d 1574, 1578 (11th Cir.1992) (consent decrees). Agreements are construed to effectuate the intent of the parties, and such intent “is derived from the objective meaning of the words used.” *Feaz v. Wells Fargo Bank, N.A.*, 745 F.3d 1098, 1104 (11th Cir.2014) (applying federal law to HUD standard-form covenant). Cf. *Kimbell Foods, Inc. v. Republic Nat’l Bank of Dallas*, 557 F.2d 491, 496 (5th Cir.1977) (applying Texas law: “The language of the contract, unless ambiguous, represents the intention of the parties.”), *aff’d sub nom., United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 99 S.Ct. 1448, 59 L.Ed.2d 711 (1979).

### A

[5, 6] In civil rights cases brought pursuant to 42 U.S.C. § 1983, the award of attorneys’ fees is governed by 42 U.S.C. § 1988. Generally, a plaintiff who prevails is entitled to an award of reasonable attor-

neys' fees "unless special circumstances would render such an award unjust." *Crowder v. Hous. Auth. of City of Atlanta*, 908 F.2d 843, 848 (11th Cir.1990) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)).

[7, 8] A consent decree constitutes a "material alteration of the legal relationship of the parties necessary to permit an award of attorneys' fees." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001) (internal quotation marks and citation omitted). So does a settlement agreement which the district court retains jurisdiction to enforce. *See Am. Disability Ass'n v. Chmielarz*, 289 F.3d 1315, 1320 (11th Cir. 2002). Other circuits have therefore held that under § 1988 attorneys' fees can be awarded for defending, enforcing, opposing the modification of, or monitoring compliance with an existing consent decree. *See, e.g., Binta B. ex rel. S.A. v. Gordon*, 710 F.3d 608, 625–27 (6th Cir.2013); *Balla v. Idaho*, 677 F.3d 910, 918 (9th Cir.2012); *Johnson v. City of Tulsa*, 489 F.3d 1089, 1109 (10th Cir.2007).

[9] There is, however, an important caveat to these general principles. The Supreme Court held in *Evans v. Jeff D.*, 475 U.S. 717, 736, 106 S.Ct. 1531, 89 L.Ed.2d 747 (1986), that § 1988 permits settlement agreements conditioned on the waiver of attorneys' fees, and we have since explained that one of the situations which might constitute a special circumstance justifying the denial of fees is "where the plaintiff through a settlement or consent order agreed to compromise his right to pursue subsequent fees." *Maloney v. City of Marietta*, 822 F.2d 1023, 1027 (11th Cir.1987).

## B

[10] A settlement agreement which is the functional equivalent of a consent de-

cree should be "interpreted as written." *Sierra Club v. Meiburg*, 296 F.3d 1021, 1032 (11th Cir.2002). *See also United States v. Armour & Co.*, 402 U.S. 673, 682, 91 S.Ct. 1752, 29 L.Ed.2d 256 (1971) (explaining that "the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it"). As explained below, paragraph 25 of the settlement agreement is unambiguous, and allows attorneys' fees only in enforcement proceedings.

[11] Paragraph 25 provides (emphasis ours) that the City would pay the plaintiffs' counsel the sum of \$900,000 in attorneys' fees, and that this payment would "conclude all claims for attorneys['] fees in the underlying litigation, including pending appeals, and in regard to all other matters connected with this Settlement Agreement, *except enforcement proceedings, should such become necessary after non-binding mediation as provided below.*" The plaintiffs and the City, in other words, chose to limit future attorneys' fees to enforcement proceedings.

Here there were no enforcement proceedings. The plaintiffs never claimed that the City breached the settlement agreement/consent decree, and never sought enforcement through civil contempt after non-binding mediation. *See Reynolds v. McInnes*, 338 F.3d 1201, 1208 (11th Cir.2003) ("[C]onsent decrees, like all injunctions, are to be enforced through the trial court's civil contempt power."); *Reynolds v. Roberts*, 207 F.3d 1288, 1298 (11th Cir.2000) (explaining the process by which a plaintiff seeks enforcement of a consent decree). Instead, they opposed the City's motion for modification, and following mediation came to an agreement with the City on some changes. Because there were no enforcement proceedings, the plaintiffs' counsel are not entitled to an



award of attorneys' fees under paragraph 25.

Our conclusion is reinforced by paragraph 30 of the agreement, which deals with modification, the type of proceeding at issue here. Notably, paragraph 30 does not provide for the award of attorneys' fees in proceedings to modify the terms of the settlement agreement/consent decree. Simply put, enforcement and modification are separate concepts (and constitute different proceedings) under the terms of the parties' agreement, and attorneys' fees are available only in enforcement proceedings. If we construed the agreement to allow for fees in modification proceedings, we would, improperly, be adding language to paragraph 30 and nullifying the limitation in paragraph 25. *See Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995) (counseling that an agreement should be interpreted to "give effect to all its provisions and to render them consistent with each other").

[12] Mr. Peery's reliance on cases like *Binta B.*, 710 F.3d at 625–27, is misplaced. The Sixth Circuit held in *Binta B.* that plaintiffs who achieve some success in opposing modifications to a consent decree are considered prevailing parties under § 1988, but that case did not involve a settlement agreement/consent decree which limited the availability of future attorneys' fees. Here we have just that sort of limitation, and it is the "agreement of the parties, rather than the force of the law . . . that creates the obligations embodied in a consent decree." *Local No. 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 522–23, 106 S.Ct. 3063, 92 L.Ed.2d 405 (1986). Again, we cannot rewrite paragraphs 25 and 30 to allow for attorneys' fees in modification proceedings.

The district court's approval of the 2014 addendum after the parties' successful mediation does not help Mr. Peery. It is true

that, in the abstract, the court's approval of the 2014 addendum constituted the sort of judicial alteration in the parties' relationship that could make the plaintiffs prevailing parties under § 1988. *See Chmielearz*, 289 F.3d at 1320. But that is almost beside the point, for—as we have said before—this is not the typical § 1988 case. The parties struck a compromise about attorneys' fees (past, present, and future) and deviated from § 1988 when they executed the original settlement agreement many years ago. Because the 2014 addendum did not change paragraphs 25 and 30 of the settlement agreement/consent decree, those bargained-for paragraphs continue to control the issue of attorneys' fees. *See Evans*, 475 U.S. at 736, 106 S.Ct. 1531; *Maloney*, 822 F.2d at 1027. And under paragraph 25, attorneys' fees are only available when there are enforcement proceedings.

We recognize that, at some level, this result may not "feel" right. After all, in the 2014 addendum the plaintiffs preserved much of the success they had originally obtained. But when parties enter into a settlement agreement that turns into the equivalent of a consent decree, they generally do so "after careful negotiation," the aim of which is to "produce[ ] [an] agreement on their precise terms." *Armour & Co.*, 402 U.S. at 681, 91 S.Ct. 1752. And we have explained that "[l]ong standing precedent evinces a strong public policy against judicial rewriting of consent decrees." *Reynolds v. Roberts*, 202 F.3d 1303, 1312 (11th Cir.2000). Although it is important to compensate attorneys who help their clients prevail (or, as is the case here, keep their hard-won gains) in civil rights cases, it is just as important to hold parties to the terms of the bargains they strike to resolve contentious and difficult § 1983 actions.

IV

The district court's denial of Mr. Peery's motion for attorneys' fees is affirmed.<sup>2</sup>

**AFFIRMED.**



**Dean KILGORE, Petitioner–Appellant,**

**v.**

**SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, Attorney General, State of Florida, Respondents–Appellees.**

**No. 13–11825.**

United States Court of Appeals,  
Eleventh Circuit.

Nov. 16, 2015.

**Background:** After his state convictions of capital murder and possession of contraband by an inmate were affirmed on direct appeal, and post-conviction relief denied, petitioner sought federal habeas relief. The United States District Court for the Middle District of Florida denied petition. Certificate of appealability (COA) was granted and petitioner appealed.

**Holdings:** The Court of Appeals, Marcus, Circuit Judge, held that:

- (1) state court's decision to uphold petitioner's death sentence despite his claim of intellectual disability was neither contrary to nor an unreasonable application of clearly established federal law, and
  - (2) new procedural rule set forth in Supreme Court decision holding that defendants whose IQ test scores fell within margin of error for state's test for intellectual disability should be able to present additional evidence of intel-
2. Given our interpretation of the settlement agreement/consent decree, we need not and do not address the district court's ruling that

lectual disability was not retroactively applicable.

**Affirmed.**

**1. Habeas Corpus ⇌842**

Court of Appeals reviews de novo the district court's denial of a federal habeas petition. 28 U.S.C.A. § 2254.

**2. Habeas Corpus ⇌450.1**

To prevail in a federal habeas action, a petitioner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement. 28 U.S.C.A. § 2254(d).

**3. Habeas Corpus ⇌450.1**

To prevail in a federal habeas action, a petitioner must show that the state court's decision was objectively unreasonable, not merely wrong; even clear error will not suffice. 28 U.S.C.A. § 2254(d).

**4. Habeas Corpus ⇌477, 508**

Florida Supreme Court's decision to uphold petitioner's death sentence despite his claim of intellectual disability, based on application of bright-line IQ cutoff of 70, was neither contrary to nor an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States, as required to grant federal habeas relief; state court's decision predated Supreme Court decision limiting states' previously recognized power to set intelligence quotient (IQ) score of 70 or below as hard cutoff for presenting additional evidence of intellectual disability, and clearly established federal law at time of state court's decision expressly left it to the states to develop appropriate

the plaintiffs were not prevailing parties in the modification proceedings.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, ET AL.,

Plaintiffs,

vs.

CITY OF MIAMI,

Defendant.

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**THE CITY OF MIAMI'S MOTION FOR TERMINATION, OR, ALTERNATIVELY,  
MODIFICATION OF THE *POTTINGER* CONSENT DECREE**

COMES NOW, the Defendant, CITY OF MIAMI (the "City"), by and through its undersigned counsel, and pursuant to Federal Rule of Civil Procedure 60(b), Paragraph 30 of the Settlement Agreement [*D.E. 382*] ("*Pottinger* Consent Decree"), approved by Order of the Court, dated October 1, 1998 [*D.E. 398*], Paragraph 25(b) of the Addendum to Settlement Agreement [*D.E. 525-I*], approved by Order of the Court dated, March 10, 2014 [*D.E. 544*], and based upon numerous and varied "significant change[s] of circumstances," respectfully moves this Court to terminate, or, alternatively, modify the terms of the Consent Decree Agreement as requested herein. In support of this Motion, the City states as follows:

**I. INTRODUCTION**

The City's treatment of its homeless population today bears no resemblance to its policies and practices concerning the homeless when this litigation began approximately thirty (30) years

ago. In 1988, Plaintiffs<sup>1</sup> filed suit alleging that the City systematically arrested homeless persons for committing non-criminal life-sustaining activities such as sleeping and eating in public places and destroyed their personal belongings in violation of 42 U.S.C. § 1983. *See Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).

That lawsuit culminated in the *Pottinger* Consent Decree which outlined the manner in which the City and its Police Department interact with those individuals who found themselves homeless within the City. For nearly twenty (20) years, both the Plaintiffs and the City have operated under the *Pottinger* Consent Decree, without the need for court enforcement. The City attributes this fact to its compliance with both the letter and the spirit of the *Pottinger* Consent Decree, the vast increase in programs and services that were created and funded exclusively by the City to assist the homeless since this lawsuit was filed in 1988 and overhauling its police practices concerning interaction with homeless persons and disposition of their personal belongings.

Today, it is no exaggeration that the City's treatment of the homeless within its jurisdiction is fundamentally different from what it was in 1988. As the indisputable facts demonstrate, the City has remedied the original 42 U.S.C. § 1983 violation and is entitled to termination of the *Pottinger* Consent Decree. Moreover, the continuous availability of services within the City and Miami-Dade County, and the City's demonstrated commitment to respecting homeless persons' rights are the very type of "changed circumstances" recognized in *Horne v. Flores*, 557 U.S. 433 (2009) and *United States v. City of Miami*, 2 F.3d 1497 (11th Cir. 1993) that make continued enforcement of a consent decree inequitable. Thus, because there is simply no policy or practice of constitutional violations that support continuation of this Court's jurisdiction, the City

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<sup>1</sup> The original Plaintiffs class consisted of approximately 6,000 homeless people living in the City of Miami. *Pottinger*, 810 F. Supp. at 1553-1554.

respectfully requests that the *Pottinger* Consent Decree be terminated, or, alternatively, substantially modified to the extent that its provisions are no longer necessary to remedy the constitutional violations described in the *Pottinger* Consent Decree.

## **II. FACTUAL BACKGROUND**

### **A. The *Pottinger* Lawsuit Timeline**

To assist the Court in having a brief background of this matter, the applicable timeline for the *Pottinger* lawsuit is as follows:

- December 23, 1988: The Plaintiffs file their initial Complaint against the City of Miami.
- July 21, 1989: Judge Atkins grants Pottinger's motion for class certification and certifies the class.
- September 8, 1989: Plaintiff's file a Second Amended Complaint against the City of Miami.
- November 16, 1992: Judge Atkins enters his Findings of Fact and Conclusions of Law on Plaintiffs' Request for Declaratory and Injunctive Relief.
- December 7, 1994: The Eleventh Circuit finds several provisions in the Court's Order unclear and remands the case on a limited basis for the district court to address these concerns. The Eleventh Circuit also asked whether Judge Atkins should modify the injunction "in light of recent events."
- On April 17, 1995: Judge Atkins complied with the Eleventh Circuit mandate but concluded that "[t]hough improvement in the overall situation is occurring via the [Dade County Homeless] Trust," "the salient facts of this case have not changed substantially."
- February 7, 1996: The Eleventh Circuit states that "the panel is of the opinion that this case can be and should be settled" and referred the case to the Chief Circuit Mediator for settlement negotiations.
- December 9, 1997: The City of Miami Commission approves the Settlement Agreement.

- February 12, 1998: The oversight committee appointed by then Governor Lawton Chiles ratifies the Settlement Agreement.
- October 1, 1998: This Court enters its Final Order Approving Settlement Agreement and Dismissing Case.
- September 11, 2013: The City of Miami files its motion for limited modification of the Settlement Agreement to address chronically homeless individuals, law enforcement protocol, and homeless registered sex offenders.
- December 11, 2013: Following two days of mediation, the parties agreed to modify the Settlement Agreement concerning the law enforcement protocol and homeless registered sex offenders.
- March 10, 2014: This Court approved the Addendum to Settlement Agreement.
- May 9, 2014: The Plaintiffs filed a motion seeking \$ 476,094.55 in attorney's fees for litigating the City of Miami's motion for limited modification of the Settlement Agreement.
- June 25, 2014: This Court denied the motion, concluding that Plaintiffs were not entitled to attorney's fees in modification proceedings pursuant to the terms of the original Settlement Agreement.
- November 10, 2015: The Eleventh Circuit Court of Appeals affirmed this Court's order denying Plaintiffs' motion for attorney's fees.

#### **B. Circumstances Leading to the *Pottinger* Consent Decree**

At the time this lawsuit was filed, there were few, if any, community-based services to provide alternatives to living on City streets for homeless persons. In short, "the majority of homeless individuals literally ha[d] no place to go." *Pottinger*, 810 F. Supp. at 1559. In light of those circumstances, this Court found that the City's primary method of addressing homelessness was to engage in "a policy and practice of arresting homeless individuals for the purpose of driving them from public areas" and "seiz[ing] Plaintiffs' personal property in violation of their Fourth Amendment rights." *Id.* at 1583. This Court specifically found that from 1987 to 1990, the City

arrested thousands of homeless persons for misdemeanors such as obstructing the sidewalk and sleeping in public places. *Id.* at 559-1560.

On October 1, 1998, after nearly ten (10) years of litigation, which included two (2) trials, two (2) appeals, extensive court-ordered negotiations and mediations between the parties, and numerous other hearings, this Court approved the *Pottinger* Consent Decree. [*D.E.* 398]. The *Pottinger* Consent Decree required, among other things, that the City's Police Department adopt departmental orders and training concerning the City's commitment to respecting the right of homeless persons and implement protocols for encounters with homeless persons and disposition of their personal belongings. [*D.E.* 398].

### **C. The City of Miami's Motion to Modify the *Pottinger* Consent Decree**

By September 11, 2013, the circumstances within the City had changed, in material and significant respects regarding the conditions of the chronically homeless, law enforcement protocols, and homeless sexual offenders, which impacted the City's ability to enforce its police powers for the safety and well-being of the homeless themselves, City and County residents, business owners and tourists.

As a result of those significant changes in circumstances, the City filed a Motion for Limited Modification of the Consent Decree ("Motion for Limited Modification"). [*D.E.* 464]. Although the City had the right to seek to set aside the entire consent decree, the City sought only limited modifications in order to address concerns expressed by police officers in their everyday experience. The City specially tailored limited modifications for the health, safety and welfare of the homeless, the police department, and the public at large. The Plaintiffs opposed the City's attempt to modify the *Pottinger* Consent Decree which would have allowed it to provide appropriate programs and services to those homeless persons who were the most difficult to reach.

During the course of court-ordered mediation, the parties reached an agreement which included, among other things, that registered sexual offenders would no longer be part of the protected class, urinating and defecating in public would no longer be protected life sustaining activities provided that there is an available restroom within a ¼ mile, and temporary structures and fires in parks would no longer be permitted. [*D.E. 525-1; 544*].

The Addendum to Settlement Agreement authorized the Police Department, and all other City departments, such as Solid Waste, to seize personal property belonging to a homeless person “in accordance with the department’s operating procedure, or if the property is contaminated or otherwise poses a health hazard or obvious safety issue to CITY workers or to members of the public. Notwithstanding any language in this Settlement Agreement to the contrary, the CITY is not responsible for taking custody of mattresses.” [*D.E. 525-1, p. 7*].

Following approval of the Addendum to Settlement Agreement, Plaintiffs sought \$476,094.55 in attorney’s fees for their “enforcement” of the Consent Decree. [*D.E. 553*]. This Court found that because the proceeding was one to modify, not enforce, the *Pottinger* Consent Decree, Plaintiffs were not entitled to attorney’s fees pursuant to Paragraph 25 of the Consent Decree. [*D.E. 557*]. This Court’s order was affirmed by the Eleventh Circuit Court of Appeals. *Pottinger v. City of Miami*, 805 F.3d 1293 (11th Cir. 2015).

**III. THE *POTTINGER* CONSENT DECREE SHOULD BE TERMINATED BECAUSE THE CITY HAS REMEDIED THE CONSTITUTIONAL VIOLATIONS GIVING RISE TO IT.**

Federal Rule of Civil Procedure 60(b)(5) permits a party to obtain relief from a judgment or order if, among other things, “applying [the judgment order] prospectively is no longer equitable.” A district court may terminate a consent decree if it finds that the basic purpose of the consent decree has been achieved. *Horne*, 557 U.S. at 450; *City of Miami*, 2 F.3d 1505-1508; *Bd.*



*of Educ. of Okla. Pub. Schs. v. Dowell*, 498 U.S. 237, 247 (1991) (“In the present case, a finding by District Court that [the agency] was being operated in compliance with the commands of the [law] and that it was unlikely the [agency] would return to its former ways, would be a finding that the purposes of the . . . litigation have been fully achieved.”).

**A. The City Has Provided a Broad Range of Services and Assistance to Homeless Persons Since This Lawsuit Was Filed**

There have been significant changes in this community in the past 30 years which have alleviated almost all of the homeless issues that necessitated the filing of this lawsuit. For instance, since the lawsuit was filed, the Miami-Dade County Homeless Trust (the “Trust”) was established in 1993. The Trust’s annual operating budget is comprised of a local 1% food and beverage tax which collects millions of dollars from restaurants and business within the City of Miami.

The Trust’s work on behalf of the homeless is conducted in accordance with its Community Homeless Plan. This Plan provides a three stage “Continuum of Care” approach to assisting the homeless through emergency, transitional and permanent housing. The Trust also conducts a semi-annual survey of homeless persons and operates a toll-free “Homeless Helpline” (which provides referrals for housing and other related services).

On October 1, 2004, the Trust began outreach efforts known as “Coordinated Outreach” in an attempt to reach Miami-Dade County’s most chronic homeless individuals.

In addition, also in 1993, a private, non-profit organization which partners with the Trust, the Community Partnership for Homeless (now known as the Chapman Partnership), was created. This organization’s mission is to encourage private sector involvement and investment in implementing the Trust’s Community Homeless Plan. It also operates Homeless Assistance Centers providing short term residency to the homeless and their families who need a place to live.

These centers are in downtown Miami (established in 1995) and Homestead (established in 1998). These shelters provide for immediate and short-term emergency needs such as food, clothing, showers and residence. Long term needs are also addressed as the shelters also provide a case plan for the homeless including counseling, job training, placement, child care, primary health care and legal aid.

The total number of available beds for the homeless has also increased dramatically since the Pottinger lawsuit was filed. Currently, there are over 8,700 available beds in Miami-Dade County for the homeless (this includes emergency shelter, transitional housing and permanent housing). Of this total, approximately 3,410 are located in the City of Miami.

The City of Miami also established a Homeless Assistance Program in 1991. This program provides outreach, assessment, placement, information, referral and transportation services to the homeless. Former homeless persons (known as "Green Shirts") are employed as Community Outreach Specialists who conduct street outreach, coordinate discharge procedures with Jackson Memorial Hospital, and the Miami-Dade County Jail, provide transportation and provide emergency assistance during weather and other emergencies.

Moreover, on May 18, 2012, the Camillus House opened a new multi-building campus located in the City at 1603 N.W. 7th Avenue. This campus, called the Norwegian Cruise Lines Campus, cost \$84 million (of which, as aforementioned, the City contributed \$10 million through its Community Redevelopment Agency). The campus offers short and long-term housing, mental health facilities, food service facilities, storage for property, retail space for clothing, computer and internet access, a multi-level garage, and even a kennel for dogs.

Furthermore, the City contributed a \$100,000 grant to Camillus House in FY 2017-18 for the purpose of funding their Day Services Program which provides, among other provisions, access

to showers, a warm meal, mailboxes and identification services to assist the unsheltered homeless. In addition, the City of Miami purchased seventy-five (75) shelter beds from Camillus for the purposes of insuring that the Police Department will continue to respond to quality of life issues in accordance with the provisions of the *Pottinger* Consent Decree.

In addition to the new and extensive outreach, shelter, and nutrition services, in 2009, the Trust also established a Donation Meter Program so the public could drop money into specially marked parking meters to fund additional shelter beds and expand the number of indoor meal programs for people experiencing homelessness. This fund now brings in approximately \$50,000.00 per year to benefit the homeless population.

Also, auxiliary programs have been implemented to assist persons at-risk of entering the Miami-Dade County criminal justice system. In 2000, the Eleventh Judicial Circuit instituted a Jail Diversion Program to divert nonviolent homeless individuals affected by mental health who commit misdemeanors away from the criminal justice system and into community-based treatment and support services. This helps provide participants with transitional services, housing assistance, assistance securing identification and entitlements, and funding for housing and medical needs. In addition, for those individuals that have been incarcerated in Miami-Dade County, a Discharge Policies Memorandum of Agreement (“MOA”) was executed in 2008 between the Homeless Trust, Miami-Dade County Corrections and Rehabilitation Department, Florida Department of Corrections, Florida Department of Children and Families, Florida 11<sup>th</sup> Judicial Circuit, Jackson Memorial Hospital/Public Health Trust, Our Kids, Inc., and community mental health facilities to aid homeless persons in accessing needed services.

Notably, after the City’s Motion for Limited Modification in 2013, the City established the Department of Veterans Affairs and Homeless Services as a full-time Department which provides

outreach, assessment, placement, information services, referral, and transportation services to homeless individuals and families in a caring and professional manner.

Finally, in 2016, the City partnered with Camillus Health, the Miami Coalition for the Homeless, and the Homeless Trust to implement the Lazarus Project. Every day, City homeless outreach workers canvass downtown with a psychiatric nurse practitioner from Camillus Health in search of homeless individuals who are among the most resistant to offers of housing and services, build their trust, diagnose their mental health condition, and provide the appropriate medication and treatment. The Lazarus Project is entirely voluntary for homeless patients who accept treatment with the goal of preventing the behavioral symptoms of mental illness that will continue to displace the patient between the streets, psychiatric wards, hospital beds and jail cells.

Before the Lazarus Project was implemented, a homeless individual discharged from a mental health facility's crisis ward with anti-psychotic medication would usually fail to take their medication and wind up back in the hospital after another mental health crisis incident. However, by going to the streets every day to find patients participating in the Lazarus Project, the City has shown they can connect with some of Miami's most vulnerable and hardest to reach with the objective of providing stable mental health and subsequent living environment.

Importantly, none of the above services or programs were available to the homeless when the *Pottinger* lawsuit was filed in 1988.

**B. The City of Miami's Police Department Has Implemented Training and Departmental Orders Concerning its Law Enforcement Officers' Treatment of the Homeless and their Property**

The particular harm that the *Pottinger* Consent Decree sought to remedy was the City's practice of criminalizing homelessness and the systematic disposal of homeless persons' property. [D.E. 382, § VI, ¶ 9]. In order to end such practices, the *Pottinger* Consent Decree required the

City to train its police officers and implement Departmental Orders “which reflects the CITY’s commitment to respect the rights of homeless people and implements the protocol which law enforcement officers must follow when they encounter homeless persons.” [*D.E. 382, § V, ¶ 7; § VI, ¶ 9*]. That has been done. (*See Departmental Order 11, Chapter 10 attached hereto as Exhibit “A”*).

For instance, Departmental Order 10.1 states that “[i]t is the policy of the City of Miami Police Department to ensure that personnel are sensitive to the needs and rights of our Homeless population, as well as knowledgeable of the department’s arrest policies concerning such persons.” (*Exhibit A*). That Departmental Order directs how City police officers are to interact with the homeless and safeguarding their personal possessions in a constitutional manner. In addition, the City of Miami Police Department trains every new police recruit class on the proper procedures and protocols for dealing with homeless individuals. Each City of Miami Police Officer is responsible for abiding by this Departmental Order. (*Exhibit A, § 10.3*). As with all Departmental Orders, any violation can subject a police officer to disciplinary action. [*D.E. 382, § VI, ¶ 9*].

Based on the foregoing, there is no dispute that the City offers a comprehensive range of community-based and police department-imposed alternatives to arresting homeless persons and systematically destroying their property. This significant change in circumstances compels a finding that the City has remedied the constitutional deprivations found at-issue in the *Pottinger* Consent Decree and is in compliance with 42 U.S.C. § 1983. Because the objectives of the *Pottinger* Consent Decree have been achieved, there is no longer a need for this Court’s continued oversight. As such, it is time for the *Pottinger* Consent Decree to be terminated.

**IV. ENFORCEMENT OF THE *POTTINGER* CONSENT DECREE IS NO LONGER EQUITABLE GIVEN THE SIGNIFICANT CHANGE IN CIRCUMSTANCES WITHIN THE CITY OF MIAMI.**

Absent systemic violations of 42 U.S.C. § 1983, and in light of the major policy and practice changes identified above, continued enforcement of the *Pottinger* Consent Decree is inequitable. As the Supreme Court has observed, district courts are empowered to modify or vacate consent decrees based on changed circumstances. *See Horne*, 129 S. Ct. at 2593 (“the party seeking relief bears the burden of establishing that changed circumstances warrant relief, but once a party carries this burden, a court abuses its discretion ‘when it refuses to modify an injunction or consent decree in light of such changes’”) (*citing Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 383 (1992) (*quoting Agostini v. Felton*, 521 U.S. 203, 215, 117 S. Ct. 1997 (1997))); *see also In re Pearson*, 990 F.2d 653, 658 (1st Cir. 1993) (“the district court is not doomed to some Sisyphean fate, bound forever to enforce and interpret a preexisting decree without occasionally pausing to question whether changing circumstances have rendered the decree unnecessary, outmoded, or even harmful to the public interest”); [*D.E. 382*, § *XV*, ¶ *30*; *D.E. 525-1*, ¶ *25-B*].

In short, the Supreme Court has determined that consent decrees “are not intended to operate in perpetuity” and cannot condemn an agency “to judicial tutelage for the indefinite future.” *See e.g. Board of Educ. Of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 248-49 (1991). Precisely the same “changed circumstances” recognized by the Supreme Court in *Horne* are present here. As previously described, there can be no doubt that significant changes to the treatment of homeless persons and their property has occurred over the course of this thirty (30) year litigation. Hence, even if a *de minimis* deviation from the *Pottinger* Consent Decree has occurred, which the City denies, such a deviation simply does not rise to the level of a systematic policy or practice necessary to sustain this Court’s continued jurisdiction.

**B. Material and Significant Demographic Changes in the City of Miami**

In addition to the numerous programs outlined above that have been established since the *Pottinger* lawsuit was filed, the City of Miami has seen a dramatic demographic movement as the downtown area is now a densely populated urban center where residents live and work.

First, the 2000 census showed that approximately 39,000 persons lived in downtown Miami. Currently, over 92,000 persons now live in Downtown Miami, an increase of 136%. Moreover, studies show that the downtown population will increase to at least 109,000 by 2021. Finally, over 13,000 residential units have been added to Downtown Miami since 2012. That is above the 22,000 condominium units were built between 2003 and 2011 of which approximately 95% of these are occupied with primary full-time residents. Currently there are 12,000 residential units under construction.

Second, Downtown Miami is one of the State of Florida's largest employment centers, with just under 250,000 people coming to downtown to work, attend classes and visit each day. Over 3.3 million feet of new office space has been developed in the past 10 years. It is also anticipated that Brightline trains will carry over 240,000 passengers to Miami per month by 2020.

Third, in addition to the increase in population and businesses, nearly 400 restaurants and retail shops have opened in Downtown Miami in the past 7 years concurrent with the addition of 900,000 premium square feet of retail. This growth is expected to continue.

Fourth, Downtown Miami has seen the development of numerous new cultural and entertainment venues, attracting more visitors and tourists to the downtown areas, including the American Airlines Arena, the Adrienne Arsht Center for the Performing Arts, and the Live Nation Amphitheater at Bayfront Park. These are in addition to the Pérez Art Museum, the Frost Science

Museum, and the Gusman Center for the Performing Arts. This does not include the Miami Marlins Park, opened in 2012 which is located about a mile from downtown.

Finally, to accommodate all of the tourists who visit Downtown Miami each year, numerous hotels have been constructed in the past few years including the JW Marriott Marquis, Mandarin Oriental, Epic Hotel, Four Seasons, Viceroy and Hampton Inn. Downtown Miami now contains 38 hotels featuring over 8,100 rooms and 132,000 square feet of meeting space.

### **C. New Safety and Security Concerns Since the Pottinger Lawsuit Was Filed**

In addition to the above significant changes set forth in A-C above, the terrorist attacks of September 11, 2001 and April 15, 2013 (in Boston) have impacted how police departments investigate and dispose of suspicious items, such as bundles of clothes, backpacks, and tents left unattended on the public right of way near security sensitive locations. Because of the *Pottinger* Consent Decree, however, the City Police Department's ability to carry out security-related investigations of what may or may not be homeless property is extremely limited, endangering the public at large.

Moreover, the opioid epidemic has impacted the City as many homeless persons overdose before Fire-Rescue has a chance to reach them. In 2016, the Miami Fire-Rescue Department responded to 194 calls related to homeless persons who overdosed and administered Narcan to 135 homeless persons.

### **VI. THE POTTINGER CONSENT DECREE SHOULD BE TERMINATED BECAUSE THE CITY HAS DEMONSTRATED SUBSTANTIAL, GOOD FAITH COMPLIANCE.**

In addition to remedying the underlying violation of law, the City is in substantial compliance with the *Pottinger* Consent Decree. The "substantial compliance" analysis is similar to the analysis discussed in *Horne*—it requires the Court to evaluate, for example, whether the



City has complied in good faith with the core purpose of the Consent Decree; whether the purposes of the litigation have, to the extent practical, been achieved; and whether it is necessary or sensible, under current circumstances, for the Court to continue to exercise judicial oversight. *City of Miami*, 2 F.3d at 1508.

Since the *Pottinger* Consent Decree was approved (and prior to that), the City has acted in good faith in achieving the objectives of the *Pottinger* Consent Decree, thus eliminating the need for Court supervision. For three decades, the City has completed a comprehensive overhaul of its Police Department's procedures for interacting with the homeless and their property to ensure compliance with the Constitution and respect for human dignity. *See Dowell*, 498 U.S. at 249 (the "passage of time enables the district court to observe the good faith of the [local government] in complying with the decree").

It is important to note that good faith, substantial compliance does not require *full* compliance. Courts have found that a party has achieved substantial compliance with a consent decree, and accordingly have dismissed litigation, even where some noncompliance persisted. For example, in *City of Miami* the original violation consisted of "past discriminatory practices against blacks, Latinos and women" in city hiring. 2 F.3d at 1507. The Eleventh Circuit held that the goal of correcting this violation informed the meaning of the decree's (seemingly broader) stated purpose, which was to "eliminate the substantial underrepresentation and uneven distribution of blacks, Latinos and women throughout the City's work force." *Id.* As the court explained:

Considering this language and the consent decree as a whole, we believe that the basic objective of the decree was to eliminate discrimination and the effects of past discrimination, which effects included the gross underrepresentation of minorities and women in certain segments of the City's work force. The long term goal of work force parity, or the shorter term goals regarding promotions and hiring, were not the "basic objectives" of the decree. Rather, these goals were a *means* of achieving and measuring progress

toward the ultimate purpose of eliminating effects of past discrimination. The real aim is non-discrimination: not achieving parity is a failure *if caused by discrimination*, but not a failure if due to factors other than discrimination.

*Id.* at 1507-08 (emphasis added).

The Eleventh Circuit again looked to a consent decree's original purpose, not merely its formalistic language, in affirming the dismissal of a longstanding class action decree in *R.C. v. Walley*, 270 F. App'x 989 (11th Cir. 2008). The *Walley* court held that, "after eighteen years of supervision, the Alabama child welfare system had undergone radical changes and was on secure footing to continue its progress in the years to come, without court supervision," notwithstanding the fact that the system "is not yet perfect and may never be." *Id.* at 992 (citing *Reynolds v. McInnes*, 338 F.3d 1201, 1219 (11th Cir. 2003)). In so holding, the Court expressly relied on the state's "history of good faith and its present commitment to remedying remaining problems." *Id.* at 993.

The same rationale applies equally here. Because the purpose of the *Pottinger* Consent Agreement has been achieved, any alleged minimal noncompliance does not preclude its termination. *See Labor/Cnty. Strategy Ctr. v. L.A. County Metro. Trans. Auth.*, 564 F.3d 1115, 1123 (9th Cir. 2009) (adhering to "the principle that federal court intervention in state institutions is a temporary measure and may extend no longer than necessary to cure constitutional violations"), *citing Dowell*, 498 U.S. at 248; *Walley*, 270 F. App'x at 993 ("[F]ederal courts should not be in the business of running important functions of state government for decades at a time.") (internal quotation marks omitted).

Furthermore, the *Pottinger* Consent Decree was not intended to remain in effect forever. It was entered to end the practice of harassing homeless individuals engaging in non-criminal life sustaining activities, while also recognizing the City's obligations to protect the safety and welfare

of its residents and visitors. However, strict adherence to the consent decree in its current form has the City shouldering the burden of unconstitutional practices from 30 years ago that are no longer present today.

Indeed, a City of Miami Police Officer, unlike any other officer in Miami-Dade County, may not take any action when they observe a homeless person observed violating a “life sustaining conduct” misdemeanor, such as sleeping in public or obstructing a sidewalk when there is no shelter space available. If a shelter space is available, the City of Miami Officer must give a warning to stop the unlawful conduct and advise as to the availability of shelter. Only if shelter is available and the homeless person refuses assistance, may an arrest be made. Significantly, the consent decree restricts the definition of “available shelter” to a shelter within a mile of the City, unless the homeless person agrees to go there. Thus, even if there are available shelters in other cities within Miami-Dade County, the consent decree imposes a heavy burden upon the City which is not equally shared by other cities.

Because the City has demonstrated good faith substantial compliance with the *Pottinger* Consent Decree’s basic purpose, its termination is now appropriate.

**VII. THE CITY’S REQUESTED MODIFICATIONS OF THE POTTINGER CONSENT DECREE.**

The party seeking relief bears the burden of establishing that changed circumstances warrant relief, ... but once a party carries this burden, a court abuses its discretion ‘when it refuses to modify an injunction or consent decree in light of such changes.’” *Horne*, 557 U.S. at 447 (*citing Agostini*, 521 U.S. at 215).

In the event this Court finds that termination of the *Pottinger* Consent Decree is not appropriate at this time, the City seeks modifications that will not alter the spirit or intent of the Consent Decree as follows:

### A. Modifications for Those Deemed Chronically Homeless

The City seeks to modify the *Pottinger* Consent Decree by exempting chronically homeless individuals from its purview. The individuals who have been identified as chronically homeless, are those who are approached by City Police Officers (or outreach workers) on a continuous basis and who either: 1) refuse services, 2) accept services only to repeatedly drop out of the continuum of care thereby depriving others of valuable shelter space or services, or 3) dissipate the limited resources of City Police Officers (or outreach workers) as they repeatedly encounter the chronically homeless. Moreover, the chronically homeless use the *Pottinger* Consent Decree against City Police Officers as they know enforcement of the City's police powers is impossible given the restrictive language of the Consent Decree.

When this Court approved the *Pottinger* Consent Decree on October 1, 1998, none of the parties contemplated that individuals would refuse to take advantage of services aimed at getting them off the streets. By remaining on the streets, however, there is a greater likelihood that chronically homeless individuals (particularly those who suffer from serious mental illness, substance abuse, or both), may engage in aggressive panhandling, theft, or violent crimes.

The *Pottinger* Consent Decree serves as an impediment to the City enforcing its police powers for the safety and well-being of the homeless themselves, City and County residents, business owners, visitors, and tourists. The City therefore requests that chronically homeless persons be exempt from the provisions of the *Pottinger* Consent Decree by adding the following proposed sentences to Paragraph 10 as follows:

An individual is not covered by the provisions of the Pottinger Agreement if the individual is a chronically homeless person. A chronically homeless person is one who refuses services on three

separate occasions within a 180-day period; however, multiple refusals in a 24-hour period shall only serve as a single refusal.<sup>2</sup>

Despite seeking this exemption, the City remains committed to treating chronically homeless persons in a humane and constitutional manner. The City only desires to have the tools necessary to get the most difficult groups of homeless into a continuum of care and provide them the food, shelter, clothing, beds and medical attention they need.

## **B. Modifications to the Law Enforcement Protocol**

### **1. Definition of “Available Shelter”**

It is believed that the *Pottinger* Consent Decree incentivizes cities throughout Miami-Dade County, such as Miami Beach, Coral Gables, Homestead, Sunny Isles, and even agencies such as the Veterans Administration and Baker Acts at Jackson Memorial Hospital, to relocate their homeless population to the City. The *Pottinger* Consent Decree also encourages homeless persons to remain in the City despite available services and shelter space throughout Miami-Dade County. Thus, increasing the City's homeless population and putting a significant strain upon the City's resources.<sup>3</sup> It is onerous for the City to put displaced homeless persons in its facilities when there is available shelter space elsewhere in Miami-Dade County.

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<sup>2</sup> The City made a similar request in its 2013 Motion for Limited Modification. Although not part of the Addendum to Settlement Agreement, the Court agreed to allow the City to re-raise this issue at a later time. [*D.E. 525-1, ¶ 25b*].

<sup>3</sup> The most recent homeless census from January of 2018 demonstrates, for example, that while the number of unsheltered homeless went down in Miami Beach, Miami-Dade County south and only slightly up in north Miami-Dade County, the number went up in the City of Miami. The homeless census also provides a historical accounting of homeless going from a total of 2161 homeless persons in 1997 to a total of 1030 this year. That is in stark comparison to the estimated number of 6000 in 1992.

The City is already at a disadvantage because every time a homeless person is arrested anywhere in Miami-Dade County they are transported to the Turner Guilford Knight "TGK" jail facility. Upon their release from TGK the Miami-Dade Corrections Department then transports the homeless individuals from TGK to the jail facility in the City of Miami and then releases them onto the streets of Miami. There is no effort undertaken by Miami-Dade Corrections or the arresting agency to return the individuals from whence they came. The City, as mentioned above, is prohibited from transporting the homeless individual back to their originating community by the provision of the settlement agreement that prohibits the City from offering a shelter space that is not within a mile radius of the City. Thus, other municipalities in Miami-Dade County are able to funnel their homeless individuals to the City of Miami via the court system.

Finally, the City submits that by limiting its ability to place homeless persons throughout Miami-Dade County, the *Pottinger* Consent Decree serves as a barrier to family reunification. Therefore, the City would request that Paragraph 11 be modified as follows:

#### VII. Law Enforcement Protocol

11. "Definition of Available Shelter". An "available shelter" means a shelter, for a period of at least 24 but not to exceed 48 hours, with a bed or a mat at no cost to a homeless person, within the territorial boundaries of ~~the City or within one mile thereof~~ Miami-Dade County, that treats homeless persons with dignity and respect, imposes no religious requirements, and, unless agreed to by the homeless person, does not impose substance abuse or mental health treatment as a condition for shelter.

This proposed provision will allow the City to place homeless persons throughout Miami-Dade County, which in many cases will be closer to the area of the County where they originated from, and who only passed through the City because they were in jail, in court, at Jackson Memorial Hospital, or taking advantage of homeless services only offered in the City. It also will



not restrict the City from offering services to the homeless when a bed (or mat) is not available within the territorial limits of the City.

This modification benefits the homeless person as well as the City in that it once again increases the number of emergency shelter beds available to the homeless, such as the 300 emergency shelter beds available in the City of Homestead. The City will provide appropriate transportation to the homeless to other shelters located outside of the City but within Miami-Dade County.

## **2. Prohibition of Storing Personal Belongings on Public Property**

City Police Officers frequently encounter homeless persons who accumulate items which clutter public sidewalks and prevent pedestrians from being able to use it:<sup>4</sup>



*(See additional photographs attached hereto as Exhibit "B").*

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<sup>4</sup> Often, such items are abandoned or contaminated.

For example, the accumulation of trash and drug paraphernalia prevented school children from walking to their neighborhood bus stop near N.W. 13<sup>th</sup> Street and 1<sup>st</sup> Court. For the safety of those children, the City requested Miami-Dade County Public School to relocate the bus stop, which it did. Furthermore, pedestrians should not have to walk in the street and contend with oncoming traffic in order to avoid these obstructions. Because the accumulation of property and trash significantly interferes with the community's use of public areas, the *Pottinger* Consent Decree should be modified to prohibit such hazardous conditions.

### 3. Cleaning and Sanitizing Public Areas

Numerous homeless encampments consisting of tents and makeshift structures can be found on public and private property within the City of Miami.



(See additional photographs attached hereto as Exhibit "C").

These encampments contain unsanitary conditions due to the presence of human feces, accumulated garbage, and disease carrying pests. Moreover, the City, especially its downtown area, is a magnet for street feeding where containers (usually Styrofoam) are discarded on the ground sometimes turning a sidewalk or vacant lot into a landfill. Not only is the Styrofoam an environmental hazard, but leftover food results in an infestation of rats, cockroaches, and other vermin which attract disease. Many homeless persons sleep in encampments near such conditions, which is a health hazard and safety concern:



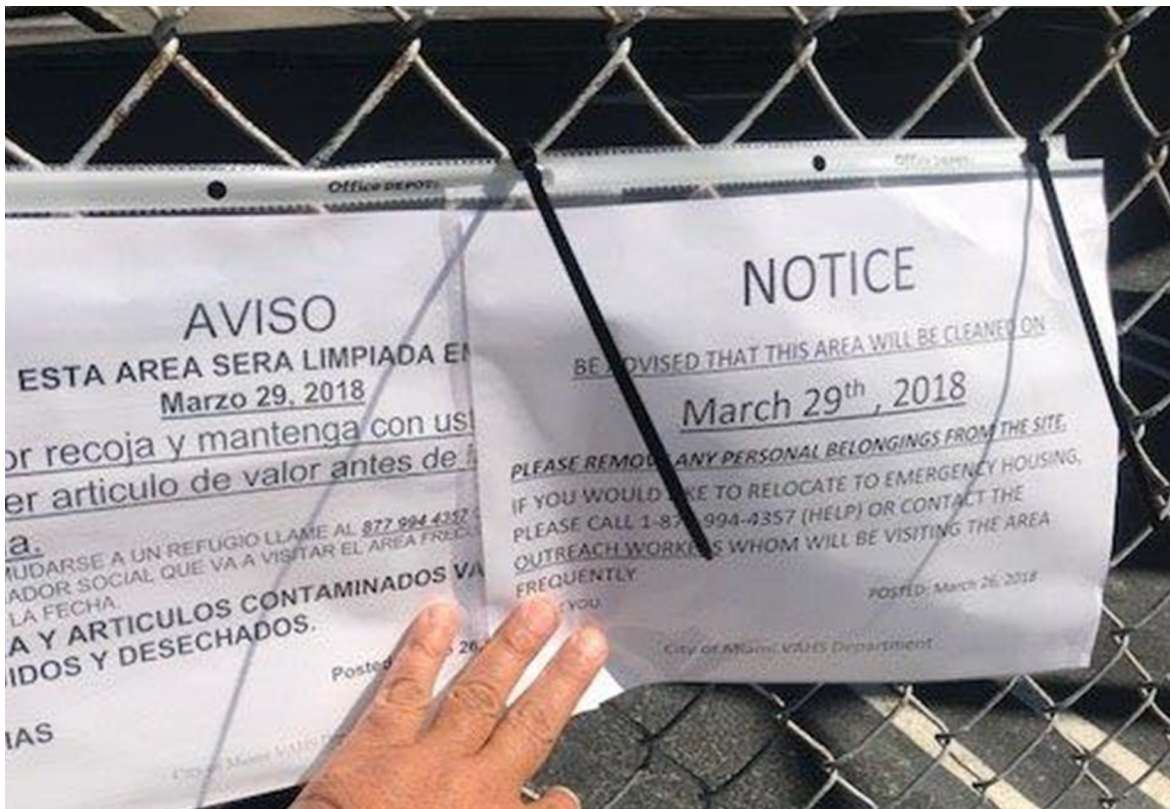
City's Motion for Termination, or Alternatively,  
Modification of Settlement Agreement  
Case No.: 88-2406-Civ-Moreno



Furthermore, City personnel has found dangerous materials such as hypodermic needles in areas where encampments have proliferated:



As a result, the City needs to take measures to clean and sanitize these public areas without the threat of Plaintiffs filing an enforcement proceeding pursuant to the *Pottinger* Consent Decree. This request is not unreasonable considering this Court recognized that the City has an interest in keeping its streets and sidewalks clean. *Pottinger*, 810 F. Supp. at 1584. In fact, the City has begun to clean its sidewalks and posts the following notice to homeless individuals in the area beforehand:



Thus, enabling homeless individuals to move their property temporarily from the area scheduled to be cleaned.

The foregoing demonstrates the health and safety issues associated with homeless persons storing and accumulating property in public areas. While the City remains committed to respecting homeless persons' property rights, it needs the leeway to protect the public at large from the health and safety issues associated with the unsanitary conditions caused by encampments. That includes

limiting the number of items that can be possessed by homeless persons on public property and disposing of belongings that are not only a health hazard but a safety issue.

### **CONCLUSION**

For more than twenty (20) years, the City of Miami's treatment of homeless persons within its jurisdiction has dramatically improved, and there is no going back. The City does not make its request to terminate the *Pottinger* Consent Decree lightly and stands before the Court ready to confirm what the community already knows – that the City of Miami has evolved in its treatment of homeless persons such that a policy of harassment has been replaced with one of compassion.

Plaintiffs will no doubt vigorously oppose this motion with outlier incidents (which do not represent a City policy or practice) to support their position that conditions for the homeless has not reached the level of perfection. Although the City has done its part, this case was never about solving homelessness, and the City should not be held captive by a consent decree that does not take into account the significant change of circumstances within the City. Therefore, the City of Miami submits that the *Pottinger* Consent Decree is no longer necessary to ensure its fair and constitutional treatment of homeless persons.

**WHEREFORE**, the City of Miami respectfully moves this Court for an order terminating, or, alternatively, modifying the *Pottinger* Settlement Agreement as set forth above.



Respectfully submitted,

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By: /s/ John A. Greco  
John A. Greco, Deputy City Attorney  
Florida Bar No. 991236

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 30th day of May, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER AND BERRY YOUNG,  
Plaintiffs,

vs.

CITY OF MIAMI,  
Defendant.

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**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR TERMINATION, OR  
ALTERNATIVELY, MODIFICATION OF THE POTTINGER CONSENT DECREE**

**I. Introduction**

The product of twenty months of difficult negotiations in light of this court's holding that the City had a policy and practice of criminalizing homelessness, the *Pottinger* Consent Decree protects the constitutional rights of a vulnerable population that lives under unimaginably difficult circumstances. As was true when the City agreed to the Consent Decree in 1998, people live on the streets today not because they choose to, but because there is a severe shortage of affordable housing and shelter. As was true in 1998, the Consent Decree is respectful of local authority, imposing no constraints on the City's ability to pursue constructive policies to address that shortage.

The City now seeks termination or modification of the Consent Decree. As the City acknowledges, it bears the heavy burden of establishing that, in light of significant changes in circumstances, the Consent Decree's basic purpose has been fully achieved, and its limits on the City's treatment of homeless persons are no longer necessary. DE 566: 6-7, 12, 25.

The court need look no further than Plaintiffs' pending Motion to Enforce the Pottinger

Consent Decree and to Hold the City in Contempt, DE 568, to see how closely the City's systematic and brutal violations of the Decree resemble the conduct that led to its adoption. The City has certainly *not* complied with either "the letter [or] spirit of the Pottinger Consent Decree." DE 566: 2. As evidence of changed circumstances, it points to an array of services and programs addressing homelessness, a formal policy of respecting the rights of homeless persons, and the growth in downtown Miami. DE 566: 7-14. But the changes were actually anticipated by the parties when the Consent Decree was adopted in 1998 and modified in 2013-2014, and so cannot justify termination or modification under *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 385 (1992).

One pivotal circumstance has *not* changed: While the resources directed toward combatting homelessness have improved over the years – an improvement contemplated in 1998, and which the Consent Decree has not impeded – there continue to be many people who "do not have the choice, much less the luxury, of being in the privacy of their own homes. Because of the unavailability of low-income housing or alternative shelter, plaintiffs have no choice but to conduct involuntary, life-sustaining activities in public places." *Pottinger*, 810 F. Supp. 1551, 1564 (S.D. Fla. 1992). Police sweeps, arrests, and destruction of their property, as the City has done repeatedly in recent years, "effectively punish[] them for being homeless." *Id.*

## **II. The City Has Failed to Meet the Heavy Burden of Showing that the Consent Decree "Is Clearly No Longer Necessary"**

The City has the burden of showing that the "basic purpose" of the Consent Decree, has been "fully achieved." *U.S. v. City of Miami*, 2 F.3d 1497, 1505 (11<sup>th</sup> Cir. 1993) (quoting *Board of Education of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 247 (1991)). This is a demanding test: a consent decree may be terminated only if its continuation "is clearly no longer necessary" to remedy the violations that prompted the decree in the first place. *Id.* at 1508.

To hold that the Consent Decree's basic purpose has been fully achieved, this court would

have to find that the City has complied in good faith and is unlikely to “return to its former ways.” *Id.* at 1505 (quoting **Dowell**, 498 U.S. at 247). **Dowell** cautions against “accept[ing] at face value the profession” of a defendant that it will commit no future violations. 498 U.S. at 249. The City accepts that the burden to justify termination is heavy. DE 566:2 (“compliance with both the letter and the spirit” of the Decree); *id.* (treatment of homeless must be “fundamentally different” from earlier conduct); *id.* (there should be “no policy or practice of constitutional violations”). Yet the City has systematically violated the Decree, both recently and in the past, and its pattern of conduct over the years makes clear that it will continue those violations if the Consent Decree is terminated.

The City errs in reading **U.S. v. City of Miami** to allow its burden to be met even when “some noncompliance persist[s].” DE 566: 15. The Eleventh Circuit sharply distinguished between the basic purpose of that decree – to “eliminate discrimination [in hiring] and the effects of past discrimination,” *id.*, 2 F.3d at 1508 – and the means of measuring progress (such as parity between the composition of the work force and general population). The court correctly held that the former was decisive: the decree’s basic purpose. And it remarked that “*nothing* in the record to our knowledge ... indicates that the City” had violated the consent decree issue since it was first approved. *Id.* at 1507 (emphasis added).<sup>1</sup> The City equally errs in its claim that significant changes in circumstances justify termination of the Consent Decree. DE 566: 6-17. The changes it cites were largely anticipated by the parties in 1998, and there remains a shortage in shelter and housing.

Significantly, the Consent Decree is a negative injunction, forbidding an unconstitutional policy and practice: arresting people for being homeless and destroying their property. It imposes

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<sup>1</sup> Similarly, in the cases the City cites, DE 566: 16, the courts found virtually full compliance with only *de minimis* violations **R.C. v. Walley**, 270 F. App’x 989, 993 (11<sup>th</sup> Cir. 2008) (“highly successful execution” of consent decree); **Labor/Cnty Strategy Ctr. v. Los Angeles County Metro. Trans. Auth.**, 564 F.3d 1115, 1123 (9<sup>th</sup> Cir. 2009) (defendant “complied fully” with only *de minimis* violations).



no obligation to appropriate funds. It leaves the City with full power to work constructively on its own or with other private and governmental entities to implement policy options that *are* consistent with the Constitution, such as providing more affordable housing or shelter. It is respectful of local government autonomy in legitimate policy choices, and so is consistent with federalism. *Cf. Horne v. Flores*, 557 U.S. 433, 448-49 (2009); *Rufo*, 502 U.S. at 392; *Dowell*, 498 U.S. at 248.

#### **A. The City's Pattern of Violations Precludes Termination**

As set out in Plaintiffs' Motion to Enforce, DE 568, for the last three to six months, the City has been engaging in a systematic practice of seizing and destroying the Plaintiffs' property, banishing them from certain areas of the City, and engaging and arresting them for life-sustaining misdemeanor conduct without offering shelter as required by the Consent Decree.

Typically, in these carefully planned operations, police arrive early in the morning, sound loud buzzers and shine bright lights to rouse homeless people, and bring in a fleet of trucks to power wash streets and sidewalks. City employees, working with City police, seize homeless individuals' vital or irreplaceable property such as clothes, medicine, and ID – with traumatic effects on the targeted individuals. Often the seizures take place even as the owner or someone watching over the property pleads with City workers not to throw it away. Further, City police on many occasions order homeless persons to move on, and have effectively cleared certain areas of homeless people entirely, such as the “Lot 16 area.” DE 568: 3-11. The City also violates the Consent Decree on these occasions by not filling out Field Information Cards (FICs). DE 568: 14-15.

The City asserts that its violations are “*de minimis* deviation[s]” or “outlier incidents.” DE 566: 12, 25. In fact it has been engaging in a carefully planned activity. For example, the senior advisor to the City Manager acknowledged that the City has had “a real push in terms of trying to address our homeless issues in various areas that we’re calling ‘hot spots’ around the City.” DE

578, Pl. Ex. at 40. While he asserted that it was done consistent with the Consent Decree, *id.*, the manner in which the “clean-ups” and police sweeps have been conducted is plainly inconsistent with the Consent Decree. The City persisted even after Plaintiffs advised it of these violations. DE 568: 9. Indeed, two days after the status conference, at which the City agreed with the Court that seizures of ID and medication should stop, Transcript of Status Conference Proceedings, June 5, 2018 (“Status Conference”), at 30, the City seized homeless individuals’ belongings.<sup>2</sup>

Moreover, as noted in the Plaintiffs’ Motion to Enforce, the City’s conduct over the last three to six months is virtually identical to the conduct that led to the lawsuit in the first place, and for which this court held the City in contempt in 1991. DE 568: 11-13. *See also* DE 566:17, 25 (acknowledgment by City that it had a “policy of harassment” at the time of the lawsuit). In 1990, Judge Atkins found that the City had conducted sweeps of homeless encampments and ordered homeless people to stand aside while it seized and destroyed their belongings – conduct he described as “innately offensive and repulsive.” DE 568: 12. He ordered the City to cease such activities. Instead it continued to engage in them, and he held the City in contempt. DE 568: 12.

Further refuting any notion that the City’s violations over the past three to six months are somehow “outliers” is the close resemblance of those actions to violations the City committed in 2013 and 2014. Over several months in 2013, including July, November and December, City workers, accompanied by police, seized and destroyed the property of homeless individuals in the Hospital District on several occasions.<sup>3</sup> A number of the incidents took place within a week or two

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<sup>2</sup> Declaration of Pablo Herrera, DE 578, Pl. Ex. 33 (medication, clothes, shoes, blankets, personal hygiene items seized June 7, 2018); Declaration of Eladio Morales, DE 578, Pl. Ex. 28 (immigration papers, medication, clothes seized June 7); Declaration of Rafael Aguiar, DE 578, Pl. Ex. 27 (medication, phone numbers, personal items, clothes seized June 7).

<sup>3</sup> Statement of Robert Celenza, DE 578, Pl. Ex. 100; Statement of Kevin Henderson, DE 578, Pl. Ex.102; Statement of Marivic Perez, DE 578, Pl. Ex.103; Statement of Anthony Rozier, DE 578, Pl. Ex.105; Statement of David Walkerow, DE 578, Pl. Ex.106; Statement of Brenda Davis, DE

after the parties submitted their Joint Motion to Approve Settlement, DE 525. (Two of the declarants also recount similar incidents in 2012.<sup>4</sup>)

Declarant Marivic Perez recounts a familiar pattern:

“[On December 17, 2013, around 10:00 am] Six Miami PD cars, including a K-9 unit, came to the area where I have been sleeping on the sidewalk. They blocked off the streets. ‘Green shirts’ were also present in City pick-up trucks. It appeared that they were preparing to take my belonging as well as those of other homeless persons sleeping the area. An apparent supervisor, ‘Steve Harvey’ was belligerent and disparaging of the homeless people on the street. I observed them taking the belongings of other homeless persons in the area that were organized and stacked against the fence.”

Statement of Marivic Perez, DE 578, Pl. Ex.103. He lost property in similar circumstances on other occasions, including clothing, shoes, toiletries, and other personal items. *Id.*

Like the more recent ones, the 2013 violations occurred as the City sought to severely limit the Consent Decree through sweeping proposals for modification. Moreover, in February and March of 2014, around the time this court approved modifications to the Consent Decree, the City again violated the Consent Decree in the Health District.<sup>5</sup> The harassment became particularly severe under the Brickell Avenue Bridge near the Hyatt in at least four separate incidents. Police roused homeless individuals sleeping there around midnight, at 2:30 am, and around 5:00 am on several occasions in March and April. The officers accused the individuals of trespassing, but offered no shelter, with one officer even asserting that Pottinger did not apply in parks.<sup>6</sup>

## **B. The City’s Other Bad Faith Conduct Equally Precludes Termination**

### **1. The City’s Cavalier Approach to Its Obligations Under the Consent Decree Demonstrates Bad Faith**

The City has a history of unilaterally adopting or attempting to adopt changes in its conduct

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578, Pl. Ex.108; Statement of Danny Dessassau, DE 578, Pl. Ex.109; Statement of William Yoummes Malsachi, DE 578, Pl. Ex.110.

<sup>4</sup> Statement of Kandi Robinson; Statement of Anthony Rozier. DE 578, Pl. Ex.104, 105.

<sup>5</sup> Statement of Richard Pryor; Statement of Diana Inciarrano. DE 578, Pl. Ex.115, 116.

<sup>6</sup> Statement of Vijay Ganta, et al., DE 578, Pl. Ex.107; Emails from Stephen Schnably to Tom Scott, Warren Bittner, April 3, 2014, DE 578, Pl. Ex. 111-113.

related to matters covered by the Consent Decree that would amount to a significant modification of its obligations – without following the Modification provision of the Consent Decree. DE 382:31 (§ XV ¶ 30), modified by DE 525-1 (§ X ¶ 25b). In 2009, for example, the City decided to clear out an encampment of homeless sex offenders, with City police threatening them with arrest for trespassing even though they did not (and could not) offer shelter. *See* Letter from Carlene Sawyer to John Timoney, Chief of Police, Feb. 2, 2009, DE 578, Pl. Ex.126. Only in 2013 did the City bother to invoke the Modification provision and press the issue. The City then took the position that the 1998 Settlement Agreement did not cover sex offenders. The Plaintiffs took the position that it did. The parties settled the matter by agreeing to express language exempting sex offenders.

Similarly, in 2015, the City undertook serious consideration of a proposed “anti-camping” ordinance that would have outlawed being homeless. As originally proposed the Ordinance would have made it illegal to “live temporarily in a camp facility *or outdoors*” on public property. Proposed Ordinance, File No. 15-0008 (2/2/15, 3/3/2015), DE 578, Pl. Ex. 117. Even apart from that provision, the ordinance would have made it illegal to “camp” outdoors on public property, with camping defined as using camp paraphernalia, and camp paraphernalia including (in the first version) blankets, pillows, and sleeping bags, among other things. In sum, the ordinance would have practically outlawed sleeping in public. No draft of the ordinance included any recognition of the City’s obligations under the *Pottinger* Consent Decree. Although ultimately it was not adopted, it did reach the second reading stage. No city that took its obligations under a consent decree seriously could possibly give consideration to a course of action so blatantly inconsistent with them.

More recently, the City appears to have adopted a new approach to implementing the Consent Decree. The law enforcement protocol requires that City police offer *actually available* shelter

in lieu of arresting or threatening to arrest a homeless individual for committing most of the specified life-sustaining conduct misdemeanors. DE 525-1: 3-5 (Section VII.14.C). In certain instances, such as fully blocking a sidewalk, an arrest can be made even if no shelter is available, but only if a warning is first issued. DE 525-1: 4-5 (Section VII.14.C.3.d). Yet as indicated in the arrest records of Tabitha Bass and Chetwyn Archer, and in a number of the more recent FICs, the City has begun to treat prior warnings or earlier offers of services (which may or may not include an offer of shelter) as sufficient to satisfy the protocol. DE 578, Pl. Ex. 35 and 36. They are not. Moreover, this change in practice again mirrors a modification the City proposed in 2013 (to which the Plaintiffs did not agree) and again in its Motion to Terminate, in which what the City calls chronically homeless persons (those “who refuse[] services on three separate occasions within a 180-day period,” DE 566: 18-19) would no longer be covered by the Consent Decree.

In addition, City police appear to have applied terms of the proposed anti-camping ordinance to homeless individuals, in violation of the Consent Decree. For example, a number of FICs for December 2017 show police officers approaching homeless individuals and accusing them of camping in the park (see DE 525-1: 5 [§ VII.14.C.3.h, citing CMC § 38-71]), even though there was no such violation. Section 38-71 merely prohibits all camping with “trailers, campers and similar wheeled vehicles,” and prohibits camping overnight with tents unless a permit is secured. The police either note that the subject had “camping paraphernalia” – a phrase unique to the proposed ordinance, and nowhere found in the City of Miami Code – or specifically cite the individuals as camping in a park because they had what that proposed ordinance identified as camping paraphernalia (*e.g.*, sleeping bed, blanket). Often shelter is offered, and in a number of cases accepted. Where shelter is refused, however, arrest is avoided – even though the individual commit-

ted no offense – only because the individual left the area. Yet while police may approach individuals not committing any crime to offer services, DE 525-1: 2-3 (§ VII.14.A), they may not then force an individual to leave the park if he or she does not accept that offer.

## **2. The City’s Consistent Mischaracterization of Its Obligations under the Consent Decree Demonstrate Bad Faith**

The City has continued its long-standing practice of blatantly mischaracterizing the Consent Decree. In 1995, Judge Atkins observed that “City employees have been misusing the Injunction and misrepresenting it to the public in ways the court is shocked to think about.” DE 360, at 12-13. *See* DE 477:32-33. In 2013, the Chairman of the City of Miami Commission claimed that homeless people “can’t be arrested for ‘life-sustaining’ activities such as defecating or urinating on the streets, taking naked baths, starting fires for warmth or blocking private property.” DE 477: 32. This overstates the breadth of the Consent Decree (which does not protect trespass on private property) and obscures the City’s power to arrest homeless people if there is available shelter.

In 2015, the City adopted an ordinance prohibiting public urination or defecation. CMC § 37-11, DE 578, Pl. Ex. 117. The City has a legitimate interest in such an ordinance (as with any of the life-sustaining conduct misdemeanor ordinances). But as the City knows, the failure to provide anything remotely approaching a reasonable set of public bathrooms has necessitated inclusion of limits on the City’s power to arrest homeless individuals for relieving themselves in public. DE 525-1: 4. Rather than publicly acknowledge those limits, however, the City approved the ordinance without any recognition of them. Only in a letter to Plaintiffs did the City acknowledge the limitation, leaving the public in the dark. DE 578, Pl. Ex. 124.

The City’s current Motion to Terminate displays the same mindset. The City repeatedly claims in its Motion that the Consent Decree somehow prevents it from providing services to homeless people. DE 566: 5, 17, 18-20, 24. That is false. The City never says how being freed

from the Decree's restrictions on arrest and property destruction would make it possible to offer more services. None of the services the City might provide, on its own or working with other public and private entities is even arguably restricted or hindered by the Consent Decree's limitations on arrest or destruction of property.

Instead of focusing on how to offer more services to solve the problem of homelessness, the City Commission chose to seek termination of the Consent Decree amidst a parade of blatant mischaracterizations of it. The Commission Chair raised the prospect that drug use is somehow protected. DE 578, Pl. Ex. 42, at 39-40 (Chair Hardemon). Commissioner Carrollo complained that because of *Pottinger* "[y]ou have hundreds of people sleeping in the streets there, having sex, urinating in the streets, taking drugs. It's one big party every night," and concluded that "If someone's going to say 'no,' then let it be a Federal judge." *Id.* at 167.

In sum, the City's own conduct makes clear that it has not satisfied the requirement of good faith compliance with the decree, and that it would quickly return (indeed, on a large number of occasions, has already returned) to its former ways in the absence of the Consent Decree.

### **C. Changed Circumstances Do Not Justify Termination of the Consent Decree**

In moving to terminate the Consent Decree, the City asserts that changes in services to homeless persons and in the City's formal commitment to respect homeless people's constitutional rights mean that the Decree is no longer needed and is somehow inequitable. The City also argues that changes in downtown Miami, including an increase in population, employment, restaurants, entertainment venues, and hotels, somehow justify terminating the Decree. DE 566: 7-13.<sup>7</sup>

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<sup>7</sup> The City also hauls out the same safety and security issue it raised in 2013, DE 566: 14, without noting that the agreement was modified to address the City's alleged concerns. Nor does it cite any specific problems with protecting security. See DE 477: 17. The City also cites the opioid epidemic, DE 566: 14, again without bothering to say how the Consent Decree interferes either with the provision of emergency services to homeless people or treatment for substance abuse.

The conclusion the City draws from these alleged changes is specious at best. The City says that because it currently offers “a comprehensive range of community-based services,” it now has an alternative to “arresting homeless persons and systematically destroying their property” – thus obviating the need for the Consent Decree. DE 566: 11. The City seems unaware that even when there were fewer services for the homeless, it did have an alternative: It could simply respect the constitutional rights of people who are involuntarily homeless, and *not* arrest them or destroy their property. That is all the Consent Decree (and the Constitution) requires.

Leaving this fundamental misconception aside, the City’s argument still fails to satisfy the requirements of *Rufo* and *Horne*. Those cases require that the changes not only be relevant to the City’s obligations, but also significant. *Horne*, 557 U.S. at 447 (quoting *Rufo*, 502 U.S. at 384). Further, changes actually contemplated by the parties at the time the Consent Decree will ordinarily not justify termination or modification, particularly if the party seeking termination or modification has failed to comply with the decree. *Rufo*, 502 U.S. at 385.

The City points to developments *before* or around the time of the Consent Decree as somehow constituting significant changed circumstances. There must be a significant change in circumstances *since the adoption of the Consent Decree*. The relevant point of comparison is not 1988, when the lawsuit was filed, but 1998, when the City, after careful consideration, agreed to the Consent Decree. Yet the City lists the establishment of its Homeless Assistance Program (1991), the creation of the Miami-Dade Homeless Trust and the imposition of a 1% meals tax to fund it (1993), the creation of the Chapman Partnership (1993), and the opening of the Homeless Assistance Centers (1995, 1998), as somehow changed circumstances. DE 566: 7-8. The Eleventh Circuit’s Criminal Mental Health Project, DE 566: 9, was created at roughly the same time, in 2000. It is ironic that the City would cite this program – aimed at reducing the number of mentally ill



people in jails – as a reason to terminate a Consent Decree that limits the City’s power to arrest homeless people for minor offenses they cannot help but commit when forced to live in public.

Second, even developments that took place after the Consent Decree was adopted cannot constitute changed circumstances if they “actually were anticipated at the time ... [the City] entered into a decree.” *Rufo*, at 502 U.S. at 385. That is so for the vast majority of “changes” the City cites. The rise of downtown as a residential, business, entertainment, and tourist venue was fully contemplated and planned by the City at the time it chose to enter into the Consent Decree. *See* DE 477: 21-23. Given that the Consent Decree in fact in no way undercuts the City’s ability to adopt constructive policies, the only logical conclusion is that the City decided that entering into the Consent Decree was fully consistent with promoting the revitalization of downtown.

Other allegedly new circumstances the City cites were already in place or contemplated around the time of the Consent Decree. The City points to the opening of Camillus House’s new facility in 2012. DE 566: 8. Yet as it is doubtless aware, even in the 1980s there were plans to redevelop the area where the old Camillus facility was located and move it. Actual plans for the new facility were being made around the time of the Consent Decree, at least as early as 2003.<sup>8</sup> Similarly, the City points to its recent agreement to help fund Camillus House’s day services program, DE 566: 8-9, without mentioning that Camillus has long provided services to homeless individuals not living there (and without noting that even with the City’s funding, the program had to be cut back after the Homeless Trust, reflecting the U.S. Department of Housing and Urban Development’s priorities, eliminated funding for it).<sup>9</sup>

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<sup>8</sup> Paul Ahr, *The Gifts of Camillus: Celebrating the Life of the Ministry* 60 (2010), DE 583, Pl. Ex. 23 (“From the mid-1908s on, various strategies were proposed to purchase the Camillus House building on NE 1<sup>st</sup> Avenue and relocate its services, but none ever came to fruition.”); Camillus House, *A New Home for An Old Friend*, July 3, 2003, DE 583, Pl. Ex. 22.

<sup>9</sup> Tom Tracy, *Bad News, Good News at Camillus House*, March 4, 2017, DE 583, Pl. Ex. 37.

The City also claims that its Departmental Order and the training it provides police officers is somehow a changed circumstance. Yet the Departmental Order was incorporated into the 1998 Consent Decree, § V ¶ 7, & Ex. A, DE 382, at 5, 33-37 (and subsequently modified in light of the 2014 Addendum, DE 525-1). The issue is not the formal commitment by the City to respect homeless people's rights. The 1998 Consent Decree accomplished just that. Section I.4 provided that "the CITY is committed to ensuring that the legal and constitutional rights of all homeless persons be fully respected by all city policies, rules, regulations, practices, officials and personnel." DE 382: 3. Section VI.9 provided that "[t]he CITY hereby expressly adopts a policy as provided for herein to protect the constitutional rights of homeless persons, to prevent arrests and harassment of these persons, and the destruction of their property ...". DE 382: 5. A provision included in a consent decree cannot by definition constitute evidence of changed circumstances. The issue is the City's failure to live up to the obligations it took on.

Even if the City could somehow point to some truly changed circumstances,<sup>10</sup> the most fundamental circumstance remains the same. In 1992, Judge Atkins found that:

The lack of low-income housing or shelter space cannot be underestimated as a factor contributing to homelessness. At the time of trial, Miami had fewer than 700 beds available in shelters for the homeless. Except for a fortunate few, most homeless individuals have no alternative to living in public areas.

**Pottinger** 810 F. Supp. at 1558. He further noted that "people rarely choose to be homeless," *id.* at 1563, and that one "notable form of assistance that is unavailable to a substantial number of

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<sup>10</sup> The City cites three other service-related developments that are new. DE 566: 9-10. None constitutes a significant change in circumstances. The Lazarus Project provides intensive *voluntary* outreach to individuals with mental health challenges. While valuable, it does not address the shortage of beds. The Homeless Trust's Donation Meter Program gives the public a new way to donate, but by measure is \$50,000 in new funding of an agency with annual expenditures around \$60 million a significant change. The City's creation of a Department of Veterans Affairs and Homeless Services in 2013 changes its bureaucratic structure, but the services the City describes are the same as before the Department was created.

homeless individuals is shelter space,” *id.* at 1564.

There are more shelter spaces today than in 1998; that is exactly what the City, working with the County, was planning at the time. And some new policy approaches have risen to the forefront, such as Housing First. But there is equally no doubt that there remains a major gap between the number of homeless people and the number of shelter beds. Further testimony to the lack of available shelter is the fact of a long wait list for shelter, the opacity of the process for those seeking it, and the unclear supervision, training, and operation of the City’s outreach workers.

The gap, as Plaintiffs will demonstrate at the evidentiary hearing, is a large one county-wide and city-wide. There are many ways to count beds and homeless populations, and at the evidentiary hearing Plaintiffs will present the most accurate information available. As one indication, the U.S. Department of Housing and Urban Development (HUD) figures show that there were 3,009 emergency beds in Miami-Dade County as of January 2017.<sup>11</sup> HUD’s 2007-2017 Point in time (PIT) Counts by CoC (Continuum of Care Provider) for Miami-Dade County show that there were 3,721 homeless individuals (sheltered and unsheltered) as of January 2017. By this measure, the number of homeless individuals exceeds the number of emergency beds by 712.<sup>12</sup>

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<sup>11</sup> DE 578, Pl. Ex. 85. These are what HUD calls Emergency, Safe Haven, and Transitional Housing Beds. The City, in contrast, cites a figure of over 8,700 beds. DE 566: 8. This figure apparently includes what HUD calls Permanent Housing beds (Permanent Supportive Housing, Rapid Re-housing, and Other Permanent Housing). In January 2017 there were 5,669 such beds, bringing the total to 8,678 Emergency and Permanent Beds. DE 578, Pl. Ex. 85. While in theory any type of bed in Miami could satisfy the definition of “available shelter” under the Consent Decree, in practice the City is likely to offer people on the streets emergency shelter beds as an alternative to arrest, not permanent supportive beds (even though permanent supportive housing is cheaper and more effective). Still, a comparison of the relevant population with the larger figure of Permanent and Emergency Beds in Miami-Dade County would also reveal a shortfall. As Plaintiffs will show, by any reasonable measure, the number of homeless people well exceeds the number of beds.

<sup>12</sup> The comparable figures in the Miami-Dade County Homeless Trust PIT Count for January 2017 were slightly higher: 2,836 sheltered homeless and 1,011 unsheltered homeless, for a total of 3,847 homeless individuals. This would make a gap of 838.

Plaintiffs are attempting to develop figures on beds and the homeless population within the City of Miami. As for the population, the Miami-Dade County Homeless Trust PIT Count for January 2017 showed 609 people living on the streets within the City of Miami, of whom 353 were living in the Downtown area, according to the DDA.

A constructive approach to the problem of homelessness would be for the City to work with other government agencies, non-profits, and the business sector towards the provision of adequate emergency shelter and affordable housing. And even with the Consent Decree in place, the City could theoretically put every one of the 600 or so persons living on the streets of Miami<sup>13</sup> to a choice of accepting shelter or being arrested – which is what the City seems to want to be able to do. What would stop the City from doing so is not the Consent Decree, but the lack of available shelter. Moreover, the City not only admits there is a shortage, see Status Conference at 41, but also seems committed to maintaining a shortage out of fear of being “inundated” by homeless people from around the country, *id.* at 74. This fear makes no sense; the vast majority of people who are homeless in Florida lived in the state for more than a year before becoming homeless. Indeed, Miami’s rate of homelessness is lower than the State average. DE 583, Pl. Ex. 21.

Finally, while the City now pays Camillus for 75 “Pottinger beds,” DE 566: 9, these beds do not fundamentally change the relevant circumstances. (Nor does the City state whether it would continue funding the beds if the Consent Decree were terminated.) As Plaintiffs understand it, 10 of these beds are used for individuals for stays of up to 24 hours, and so have a daily turnover. They can be accessed by persons on the street only through a City police officer. The other 65 beds

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<sup>13</sup> The Miami-Dade County Homeless Trust PIT counts routinely vary from one period to the next. For example, the PIT counts of unsheltered persons in the City of Miami for January 2016, August 2016, January 2017, August 2017, and January 2018 were 640, 681, 609, 684, and 665, respectively. Further, PIT counts undercount the number of homeless persons in important ways.

are occupied exclusively by individuals who came to Camillus through one of the 10 24-hour beds. Individuals in those 65 beds may stay for up to several months with Camillus' services. Thus on any given day most of the 65 beds are occupied. It is unclear whether the City's decision to fund 75 beds added to total bed capacity in Miami-Dade County, or simply reserved some of existing capacity for use by the City police. Either way, the gap between the total number of beds and the total number of homeless people remains great.

### **III. The City's Proposed Modifications Are Neither Justified by Significant Changes in Circumstances Nor Suitably Tailored**

The City asserts that the Consent Decree should be modified because of changed circumstances, relying on the same factors to which it points as justifying termination. For the reasons set out above and in Plaintiffs' 2013 Reply, DE 477, the allegedly changed circumstances do not justify modifying the Consent Decree. Equally important, the City's proposed changes are not suitably tailored to the allegedly changed circumstances as *Rufo*, 502 U.S. at 383, 391, requires.

The City proposes four modifications. The first two are identical in substance to modifications the City proposed in 2013. It does not connect any of the four to particular changed circumstances.<sup>14</sup> In any event, as set out above, the City points to no significant changed circumstances.

The City proposes to strip "chronically homeless person[s]" of all the Consent Decree's protections, saying it needs "the tools necessary to get the most difficult groups of homeless into a continuum of care and provide them the food, shelter, clothing, beds and medical attention." DE 566: 19.<sup>15</sup> It does not say how exposing them to arrest for being homeless, without the Consent

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<sup>14</sup> In contrast to 2013, DE 464: 20, the City does not now claim that the problem of the chronically homeless is new. As Plaintiffs pointed out in 2013, the issue of chronically homeless individuals was an important concern in 1998, and so actually anticipated. DE 477: 23.

<sup>15</sup> Neither HUD nor the Homeless Trust provides a figure for the chronically homeless (by the federal definition) for the City of Miami alone. But the HUD PIT Counts for January 2017 show there were 309 chronically homeless individuals in all of Miami-Dade County, of whom 135 were unsheltered (*i.e.*, living on the streets). DE 578, Pl. Ex. 85.

Decree's protections, would help them. The City does not have the power to commit anyone to mental health treatment except through law, such as the Baker Act. Even if the City began to try to force people into shelters, it would run up a currently insuperable barrier: the large shortage of shelter beds. And even if it could force all "chronically homeless" persons into shelters, it could not make them stay there. Shelters are not prisons. Likewise, continually arresting and jailing homeless people, and then discharging them into homelessness, is not a sustainable solution.

Plaintiffs pointed out in detail the many problems with the City's proposal in their 2013 Response. *See* DE 477: 9-10, 11-12, 18-19, 28, 30, 31-32. The carelessly drafted proposal would exempt anyone deemed chronically homeless from all the protections of the Consent Decree, including the property protections and monitoring obligations. Further, the City's definition (at odds with the federal definition) would, for example, sweep in a person who had been on the streets for only six months and turned down offers of shelter in Homestead (which, under the Consent Decree, may be offered as a voluntary option). Even more ominously, the City's complaint that people "drop out of the continuum of care," DE 566: 18, suggests that leaving a shelter without having found housing would be counted as a refusal of services under the City's definition. That would penalize individuals for leaving shelters, coming close to turning them into detention centers.

The City's second proposal is to eliminate the requirement that shelter offered a homeless person in lieu of arrest be within a mile of the City limits. DE 566: 19-21. It misquotes the very provision it seeks to modify, DE 566: 20, leaving out language added in 2013 that includes as "available shelter" any shelter in the County "if agreed to by the homeless person." DE 525-1: 2 (¶ 11). If "family reunification" is somehow a problem, DE 566: 20, this provision takes care of it.

As a practical matter, the City's proposal would mean that in lieu of arrest, homeless individuals in Miami could be taken against their will to the HAC in Homestead, some 30 miles away.

The City ignores the many reasons that homeless individuals' unbelievably difficult lives might be a little less hard downtown: government services, day jobs, public transportation, and medical care. Homeless persons, like all individuals, have a constitutional right to travel and against forced travel, as well as the right to live in a municipality of their choosing; exile is not a permitted punishment for violating the law. Moreover, the City – which complains without any evidence that other cities “dump” homeless individuals downtown, DE 566: 19 – in essence seeks to dump homeless people in Homestead. The court should not endorse this shell game. Finally, the City's proposal would accomplish nothing. The Homestead HAC is typically full, as are other emergency shelters, rapid rehousing, safe havens, and transitional housing.

This court should not consider the City's third and fourth proposed modifications. DE 566: 21-25. The City provides a diatribe with photos, including two of an area with little foot traffic, DE 566: 21, but does not provide specific changes. This failure makes it impossible for Plaintiffs to respond fully, but Plaintiffs offer the following comments.

The City complains about trash and health hazards, and sidewalks being so blocked that pedestrians have to walk in the streets. DE 566: 21-25.<sup>16</sup> The City does have a legitimate interest in clean streets and free passage on sidewalks. So do Plaintiffs. Indeed, the very photographs of the squalor in which some individuals are forced to live (DE 566 at 21-23) drive home the point that Plaintiffs living on the street are doing so because they have no practical choice.

Nothing in the Consent Decree prohibits the City from cleaning up discarded styrofoam containers or used needles, or requiring people to temporarily move their property out of the way while an area is cleaned up. More public bathrooms and trash cans in areas where homeless people

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<sup>16</sup> The photograph on DE 566, at 22, depicts a vacant lot, not goods stored on a sidewalk. The City does not say whether that lot is public or private. Trespassing on private property is not a protected life-sustaining conduct misdemeanor. DE 525-1: 5.

live would reduce the need for clean-ups. But to the City, that would somehow be encouraging homelessness, just as food sharing programs – which the City has unlawfully attempted to prohibit DE 568: 11 n.5 – supposedly give people an incentive to live on the streets.

What the Consent Decree does prevent is throwing away belongings that are recognizably the property of homeless people. DE 525-1: 7. Nor does the Consent Decree permit an army of police officers and NET employees to move in so quickly that homeless persons do not have the time to move their belongings out of the way. And while property that is genuinely abandoned or contaminated need not be preserved, *id.*, the many declarations the Plaintiffs have submitted show the deliberately indiscriminate nature of the City's operations. Further, the Consent Decree does not permit the City to “clean up” an area by eliminating homeless people from it. Yet that is the City's aim. For example, right after homeless individuals living near Macy's were placed in shelters, the City's Director of Homeless and Veterans Affairs remarked that “Now it's just a matter of consistently monitoring it to deter people from returning.” Email from Sergio Torres, March 20, 2018, at 8:40 am, DE 578, Pl. Ex. 76. *See also* DE 568: 7-8. Finally, while the City has a legitimate interest in clean public areas, the court should recall Judge Atkins' earlier finding that there is a strong public interest in not worsening the plight of homeless individuals by throwing away their belongings or subjecting them to repeated arrests for living in public. DE 568: 12-13.

The City vaguely suggests that accumulations of property and trash on public property should be prohibited, and “the number of items that can be possessed by homeless persons on public property” should be limited, DE 566: 22, 25. It also says that belongings that are health hazards and safety issues should be subject to disposal. DE 566 at 25.

These vague proposals are not suitably tailored to the alleged changed conditions. First, nothing in the Consent Decree prohibits the City from disposing of trash on public property –



where “trash” means items the City *reasonably* understands to have been abandoned. Second, the Consent Decree expressly permits the City to dispose items that are contaminated or pose a health hazard or an “obvious safety issue.” DE 525-1: 7-8 (VII.14.F).

The other proposal – to somehow limit the number of items that homeless people may keep on public property – would amount to a ban on living on the streets. It is not possible to live on the streets without keeping some property, and not all of it is small like medicines or ID. Any attempt to set some limit on the kind or amount of belongings a homeless person may keep would be arbitrary. Nor is the burden on the City great. To the extent that belongings of homeless persons fully obstruct passage on a sidewalk, the Consent Decree permits a police officer to warn individuals to cease blocking it, and arrest them if they do not heed the warning – even if there is no available shelter. DE 525-1: 4-5 (VII.14.C.3.d). Even a partial blockage may result in a threat of arrest, if available shelter is offered as an alternative. While the Consent Decree rightly requires that the City secure even large or bulky items when a homeless person is arrested or placed in a shelter, it does not require the City to store mattresses. DE 525-1: 7-8 (VII.14.F). The City gives no evidence why any of these provisions – to which it agreed in 1998 and 2013 – are unworkable.

#### **IV. Conclusion**

The Consent Decree neither prescribes a solution for ending homelessness, nor stands in the way of any legitimate policy response to homelessness. The one thing it does is preclude criminalization as a policy response, one universally rejected as an effective approach. This fact, combined with the City’s repeated violations and bad faith treatment of the Consent Decree, and the continuing existence of a severe shortage of shelter and affordable housing, leaves the City’s proposals for termination or modification of the Consent Decree utterly without any foundation.

WHEREFORE, Plaintiffs respectfully request the Court to issue an order denying the motion.

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### CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on the 29th day of June, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER AND BERRY YOUNG,

Plaintiffs,

vs.

CITY OF MIAMI,

Defendant.

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**MOTION TO ENFORCE THE POTTINGER CONSENT DECREE AND TO HOLD THE  
CITY IN CONTEMPT**

Plaintiffs, through undersigned counsel, pursuant to Federal Rule of Civil Procedure 7(b) and Sections X ¶ 25a and XIV ¶ 29 of the Settlement Agreement approved by this Court on October 1, 1998, DE 398, with modifications approved by this Court on March 10, 2014, DE 544 (referred to hereafter as the “Consent Decree”), and based on the City’s recent pattern of widespread and systematic violations of fundamental protections of the Consent Decree, move this Court to enforce the Consent Decree and for other relief specified below.<sup>1</sup> As grounds, the Plaintiffs state:

**I. Introduction**

1. Some twenty-six years ago, Judge Atkins issued his landmark decision condemning

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<sup>1</sup> It’s no surprise that the City “beat the Plaintiffs to the punch” with its Motion for Termination, or, Alternatively, Modification of the Pottinger Consent Decree. Upon learning in late March of a series of suspected widespread violations of the Pottinger consent decree, Plaintiffs invoked the mandatory mediation provisions of the Consent Decree to seek enforcement of its provisions. The City broke from a second mediation session on May 17th for City representatives to “confer” with its clients. Plaintiffs heard nothing more from the City until they got notice the morning of May 30th from the mediator that the City had declared an “impasse.” Moments later, the Plaintiffs received electronic copies of the City’s Motion for Termination.

the City for its policy and practice of systematically violating the constitutional rights of homeless people in the City of Miami. ***Pottinger v. City of Miami***, 810 F. Supp. 1551 (S.D. Fla. 1992).

2. After appealing Judge Atkins' ruling, and in response to the Eleventh Circuit order to mediate, the City, over the course of some twenty months, negotiated a detailed settlement of all of Plaintiffs' claims against it. It agreed to, *inter alia*, (1) a policy of respecting the rights of homeless persons, (2) a protocol for making contact with or seeking to arrest homeless persons engaged in "life sustaining misdemeanor conduct" while living on the streets, and (3) a scheme to compensate homeless persons for the injuries they suffered as a result of being harassed, wrongfully arrested, and having their property destroyed. In 1998, after a "fairness" hearing, this Court accepted the parties' mediated settlement as a consent decree.

3. Five years ago, the City invoked provisions of the consent decree to modify it. Following two day-long mediation sessions, with all City stakeholders present, the Plaintiffs agreed to give up certain protections, and to loosen others in the City's favor. This Court again accepted the parties' compromises and entered the parties' amended settlement as a Consent Decree.

4. It has recently come to Plaintiffs' counsels' attention that, for the last approximately three to six months, the City has been systematically violating the Consent Decree by seizing and destroying the Plaintiffs' property, banishing Plaintiffs from certain areas of the City, and engaging and arresting Plaintiffs for "life sustaining misdemeanor conduct" without offering shelter or assistance as required by the Consent Decree. The City's actions are nearly identical to its actions and conduct that precipitated this lawsuit and formed the basis for Judge Atkins' condemnation of its anti-homeless policy and practices.

5. Plaintiffs have amassed nearly two dozen declarations from homeless persons who recently have had their property destroyed, have been ordered to leave public sidewalks while

committing no crime, or have been harassed by police and/or arrested without being offered shelter. Plaintiffs possess video evidence demonstrating that the City is collecting and destroying homeless persons' property *en masse*. They have video evidence of homeless persons being arrested without probable cause, and without any offer of shelter.

6. The City's conduct has persisted even after Plaintiffs contacted it to advise of these blatant transgressions. After learning of the City's systemic violations, Plaintiffs contacted the City informally, requesting a meeting, to avoid formal proceedings. This request was ignored. Plaintiffs then invoked Section X of the Consent Decree and requested a mediation, which took place on April 24 and May 17. These efforts were met by the City's mandate to its lawyers to dissolve the Pottinger consent decree, and the City's sudden declaration of an impasse on May 30. Because the Plaintiffs have been unable to resolve their claims through mediation, they seek the Court's assistance to enforce its the Consent Decree, order the City to cease and desist from its violative conduct, compensate them for the injuries they have suffered, pay their attorneys' fees, and provide such other and further relief as is necessary to protect their rights.

## **II. The City's Systematic Police Harassment of Homeless Persons and Destruction of Their Belongings**

7. Beginning some three to six months ago or more, the City embarked upon a "clean-up" of various targeted areas throughout Miami. City employees, typically working under the supervision of the police, have seized what are clearly homeless people's belongings and hauled them off like trash – at times over the desperate pleadings of individuals trying to save them. Separately or in connection with these "clean-ups," City police officers have been threatening homeless persons with arrest – explicitly or implicitly in the form of orders to move on from an area – without offering shelter, and often without even citing any legal violation. On many occa-

sions, these threats have amounted to banishment from a given area, as the police admonish homeless persons to stay away from that area and not come back. Finally, City police have failed to document their interactions with homeless persons in the “clean-ups” and sweeps, as required by the Consent Decree.

8. These violations are City-wide. Many of them have taken place in a downtown area known as Lot 16, referring to a municipal parking lot a block east of the Miami River under the I-95 underpasses that span SW 2nd and 3rd Streets.<sup>2</sup> Many other violations have occurred in an Overtown neighborhood around the I-395 overpass, near NW 11th and 13th Streets, roughly between NW 1st and 2nd Avenues. But the violations have by no means been confined to those areas. The attached declarations document violations near the old Macy’s on Flagler, near the FedEx Ship Center on SW 2d Street, near the new BrightLine station on NW 1st Avenue at NW 6th Street, and in Peacock Park in Coconut Grove.

9. The “clean-up” operations follow a consistent pattern. Particularly in the Lot 16 area, the operations have begun with police arriving between 5 and 6 am, sounding loud buzzers and shining bright lights on homeless people in the area, telling them to move on because the area is going to be cleaned up. Declaration of Robert Rhodes, ¶¶ 6-9;<sup>3</sup> Richardson ¶ 6; Villalonga ¶ 8. In some instances signs have been posted notifying people of clean-ups, but the operations do not necessarily follow the posted times. Haynes ¶¶ 11-12; Cauley ¶ 6; Blasko ¶ 6; Chibanguza ¶ 4. In some instances, a fleet of trucks is brought in – a water pressure cleaning truck, pick-up trucks,

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<sup>2</sup> The Lot 16 area is roughly bounded by the Miami River on the West, SW 2d Avenue on the east, SW 2nd Street on the north, and SW 3rd Street on the South. the Map in Exhibit 1 gives the approximate location of the violations referred to in this Motion or in the attached declarations.

<sup>3</sup> The Declarations are provided in the Appendix in alphabetical order by last name as Exhibits 2-24. In this motion, they are cited by last name and the paragraph number of the Declaration. An index to the Exhibits in the Appendix follows this motion.

and a street sweeper – and a team of City employees arrives to conduct the clean-up under police supervision. Archer ¶ 8; Bass ¶ 6; Donald ¶ 5; Rhodes ¶ 6. In other instances the operation is somewhat simpler, confined to the police, City employees, and a pick-up truck. Allen ¶ 5; Blasko ¶ 7.

10. The initiation of the clean-ups is hurried. People report being told by police or City employees (usually “Green Shirts” -- City of Miami NET employees) to move their belongings out of the way quickly, Richardson ¶ 7, or even “immediately,” Rhodes ¶ 6. The time between warning and commencement of the clean-up can be as little as five minutes. Archer ¶ 3; Bass ¶ 3. In Overtown, City employees woke up one individual known as Rhode Island Red and would not even give him a minute to gather his belongings; the City ended up seizing all his belongings except his backpack. Bass ¶ 8; Archer ¶ 9. Some people have been told by City employees that they can take only what they can move in 30 seconds. Archer ¶ 8; Bass ¶ 7. Individuals who haven’t left quickly enough have been sprayed with the power-washer. Archer ¶ 3; Bass ¶ 3.

11. City workers then move quickly to gather up for disposal belongings that are obviously those of homeless people – *i.e.*, which are neatly organized and stacked, out of the way so they do not block passage on the sidewalk. Every declarant who lost property to the City’s seizures describes how he or she or others had done so. Allen ¶ 4; Archer ¶ 3; Bass ¶ 3; Blasko ¶ 4; Cauley ¶¶ 5, 7; Chibanguza ¶ 2; Donald ¶ 5; Grant ¶¶ 8, 9; Haynes ¶ 9, 13, 14; Hill ¶¶ 6, 8, 14; King ¶ 4; Lane ¶ 5; Peery ¶ 13; Rhodes ¶ 5; Saluki ¶ 10; Self ¶ 4; Stanley ¶ 4; Winston ¶ 5. People’s belongings are kicked around and thrown into piles, Cauley ¶ 9, and then loaded into trucks to be carted away as trash. Individuals who see their property being piled up this way or who see it already in a truck plead to be allowed to retrieve it. Archer ¶ 8; Cauley 19; King ¶¶ 4-5; Saluki ¶ 5,

12. Either their requests are denied entirely – sometimes threateningly – or they are allowed to



retrieve a particular item, with the bulk of their belongings still being thrown away. Archer ¶ 8; Peery ¶ 13, and video, Exhibit 34.<sup>4</sup>

12. For example, Terry Fluker, who had been staying near Macy's saw City employees take his backpack and throw it into a truck. Mr. Fluker asked the employee "why he took my backpack and he said, 'we owe you no explanations,'" and would not let Mr. Fluker get his backpack back. He lost his clothes, personal items, his Florida identification card, and his social security card. Fluker ¶ 4. In Overtown, on April 17, David Peery saw a NET employee take a look at neatly organized stacks of homeless people's belongings and then tell the people in the vicinity, "Okay, now we're going to throw your shit away" and then began to kick them into one pile. A woman cried and screamed as her belongings were piled up; the NET employee allowed her to get back one thing – her purse or her shoes. The NET employee also threatened another man with his fist for trying to retrieve his belonging from the heap they'd been put into. These events are documented in Mr. Peery's Declaration and in the video he took that day, Exhibit 34.

13. As is described in a number of declarations, the property of anyone who happens to be away at the time of the operation is routinely disposed of. Allen ¶ 6,7; Archer ¶ 3; Bass ¶ 3; Blasko ¶¶6-7; Cauley ¶¶ 7-11; Chibanguza ¶¶ 5-6; Donald ¶ 9; Grant ¶ 10; Haynes ¶¶9, 13, 14, 19; Hill ¶¶ 9-12, 13-16, Lane ¶¶ 7-9; Rhodes ¶¶ 6, 7, 10, 12; Richardson ¶ 7, 9; Self ¶ 4; Stanley ¶ 6; Winston ¶¶ 6-8. This happens even though the individuals have left their belongings out of the way, neatly organized, in a form that makes it clear they are not abandoned. It happens even where they ask another individual to watch over it for them; the City workers do not allow people

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<sup>4</sup> As noted in the list of Exhibits attached to this motion, Plaintiffs will file video evidence pursuant to this Court's Local Rule 5.3.

watching another's belongings to save it from disposal. For example, Wilbert Hill, who has diabetes and other medical conditions including acid reflux and heart problems, left the area near the BrightLine station early one morning to seek a bed at Camillus. He left his belongings neatly organized and out of the way, and asked another person named Steve to watch over them while he was gone. When he returned, Steve told him that city workers and the police had come by and thrown everything away, and had refused to let people who were safeguarding others' belongings prevent them from being seized and removed. Hill ¶¶ 9-12. Willie Grant, homeless and in a wheelchair because of an accident that resulted in loss of a leg, left the area near Government Center where he was staying to wash up half a block away. He returned to find City employees throwing his belongings away. Even though he identified them as his, the City employee said they were "abandoned" and refused to let him get them back. Grant ¶¶ 9-10.

14. The City also treats returning in the midst of a clean-up operation as too late. When Markell King returned from a meal at Little Sisters of the Poor to the Overtown street on which he was staying, he witnessed City employees throwing his belongings in a truck. In response to his efforts to get them back, they said "it's clean up day" and told him he was too late: "These are the rules," they said. A police officer nearby said his hands were tied. King ¶¶ 8-9. The same thing happened to Eddie Fisher. Fisher ¶¶ 7-9.

15. The police role in these "clean-up" operations is pervasive and central. Nothing begins until the police arrive. Further, it is the police who order individuals to get out of the area. *E.g.*, Allen ¶ 5; Bass ¶ 3; Fluker ¶ 4; Lane ¶ 7.

16. Particularly in the Lot 16 area, but not only there, the police have ordered homeless individuals not just to move out of the way during the "clean-up," but to leave the area entirely and stay away. Haynes ¶ 13. The Lot 16 area, in which 20-60 homeless persons formerly stayed,

is now largely devoid of homeless people. Peery ¶¶ 8-10; Haynes ¶ 3. As Carl Winston said, “When the police tell us to move, I do what they say and relocate for the night.” Winston ¶ 11. Many others state that they have permanently moved to a different location after being ordered out. Allen ¶ 9; Blasko ¶ 8; Chibanguza ¶ 8; Fluker ¶ 5; Self ¶ 9; Villalonga ¶ 9.

17. Apart from these “clean-ups,” there have also been multiple instances of police officers ordering homeless individuals to move on or leave an area – without citing any claimed violation, and without offering shelter. Individuals who are subjected to these orders have no practical choice but to comply. To take one example, Java Houston’s declaration and video, Exhibit 34, document an arbitrary order by a police officer to leave the area near Macy’s where she was staying – arbitrary because the police cited no violation and she was not in fact blocking the sidewalk. She notes, “I complied with the order and moved, even though I had done nothing wrong.” Houston ¶ 7. Rafael Villalonga’s experience provides a second example. As he was sitting on the sidewalk alone in the Lot 16 area one evening in mid-March, a police officer drove up to him and told him, “You can’t stay here, you have to leave now!” Villalonga ¶ 4. He, too, complied even though the order was wrongful.

18. One constant in these clean-up operations and police orders to move on or leave an area is the fact that no one is offered shelter. Under Section VII.14.A of the Consent Decree, police officers are not permitted to approach a homeless person who is not engaged in any violation unless it is to offer shelter or other services. Yet police officers have ordered many homeless individuals to move on and stay away from an area, without offering any shelter. When Java Houston was arbitrarily ordered by police to move on, on two separate occasions, no shelter was offered. Houston ¶ 6. Further, the declarations document many instances of clean-ups with no offers of shelter – even though a threat of arrest is explicit or implicit. *E.g.*, Cauley ¶ 12; Self ¶ 6; Villalonga ¶ 4;

Winston ¶ 11.

19. Far from being isolated, these violations have been persistent over a considerable period of time. The bulk of the violations Plaintiffs have documented so far have taken place since March of 2018. But as the attached declarations show, there are documented instances of property seizures as far back as mid-October, 2017. Allen ¶ 5 (“The police would pull up in squad cars ..., tell people to move and the city workers would take their possessions from the street and throw them into the pick-up truck.”) Further, although Plaintiffs demanded that the City cease the violations during the time when the parties attempted to work things out through mediation, they have continued through the present: the most recent property seizure documented in the attached declarations took place on May 17, 2018. The seizure of Willie Grant’s belongings on that date, recounted above, is strikingly similar to the property seizures Stephen Allen describes back in mid-October in the Lot 16 area. Grant ¶¶ 8-10.

20. The City’s violations have affected many people. Plaintiffs’ counsel currently have declarations from twenty-three class members. The number of instances of violations described in these declarations far exceeds the number of declarants. Many declarants recount not only their own experiences but also having personally seen City and police conduct that violates others’ rights under the Consent Decree. E.g., Bass ¶¶ 3, 8, 9; Fisher ¶ 8; Haynes ¶¶ 9, 13, 14; Peery ¶¶ 13-16; Rhodes ¶ 6; Richardson ¶ 7. Moreover, many homeless persons are reluctant to be identified or seen as challenging the police. As noted earlier, areas where homeless people previously stayed are now cleared out, with individuals having gone to parts unknown because police have ordered everyone to move on and stay away.

21. Some of the declarants have been homeless for several years; others have been living on the streets for no more than a few months. E.g. Allen ¶ 2 (since February 2018); Blasko ¶ 2

(same); Donald ¶ 2 (past three and a half years). Regardless of how or when they became homeless, all face the same shortage of shelter – the number of homeless persons county-wide exceeds the number of available beds – and the same lack of affordable housing.

22. A number of homeless people have vulnerabilities going beyond those that are inherent in being forced to live on the streets. Physical and mental disability can lead to homelessness for some people; and homelessness can cause or exacerbate these disabilities. *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1557, 1563 (S.D. Fla. 1992). As a result, homeless people are disproportionately likely to be disabled, sick and fragile. That is true of many of the declarants here: Tabitha Bass, struck by a car the day before her arrest for obstructing the sidewalk, dead ten days after being released from jail; Michael Cauley, a disabled army veteran, Cauley ¶ 2; Michael Donald, an army veteran/defense contractor severely injured in 2007 by an IED, leaving him with traumatic brain injury, post-traumatic stress disorder, and a bad leg with metal rods, Donald ¶¶ 2, 3; Willie Grant, who became homeless and wheelchair-bound after losing his leg, and suffers stress-triggered asthma which sent him to the hospital for three days following seizure and destruction of his property, Grant ¶¶ 2-4, 12; Ashley Self, a social security disability recipient who cannot walk well, Self ¶ 2; Jeffrey Stanley, who suffers from a bladder disorder that keeps him in diapers, Stanley ¶¶ 5, 7; and Wilbert Hill, who suffers from diabetes, a heart condition and acid reflux. Hill ¶ 12.

23. The property losses have had calamitous effects on Plaintiffs. The City has trashed homeless people's medicines, Florida ID cards, social security cards, birth certificates, phones, clothes, shoes, blankets, jackets, toiletries, food, cash, eyeglasses, sleeping bags, a bike, e.g., Archer ¶ 6, Bass ¶ 4; Blasko ¶ 7; Cauley ¶ 10; Chibanguza ¶ 5; Donald ¶ 9; Fisher ¶ 10; Fluker ¶ 4; Haynes ¶ 14; Hill ¶ 12; King ¶ 10; Lane ¶ 9; Saluki ¶¶ 8, 13; Self ¶ 4; Stanley ¶ 7; Winston

¶ 8 – the list of basic survival items people on the streets need, and which the City has seized, is endless. Sometimes the description is especially basic: “I lost everything I owned.” *E.g.*, Donald ¶ 9; Self ¶ 4. Even when the items aren’t somehow essential to survival, their loss is real – irreplaceable family photos, books, radios, head phones, board games, stuffed animals, an old iPad, personal papers or journals. *E.g.*, Archer ¶ 6; Cauley ¶ 10; King ¶ 10; Lane ¶ 9; Winston ¶ 8. Those who lost ID to the City’s seizures – some more than once – have enormous challenges in replacing it. Ashley Self believes she suffered identity theft as a result. Declaration of Ashley Self, ¶ 5. Some lost their clothes and bedding on a cold night. *E.g.*, Rhodes ¶ 11. The stress of the loss (including the loss of his asthma medicine) caused Willie Grant an asthma attack and sent him to the hospital for three days, Grant ¶ 12, and sentenced Michael Donald to suffer from his migraines without the benefit of his migraine medication Zomig. Donald ¶ 9. The City’s destruction of Jeffrey Stanley’s property on a day when he was in the hospital for removal of a cyst made his recovery from the procedure very difficult. Stanley ¶ 7.<sup>5</sup>

24. The injuries suffered by those who have been subjected to arbitrary orders to move on are of a different nature, but just as real. To be subjected to temporary or permanent banishment from an area of a City, simply because you are homeless, is a grievous denial of the most basic rights.

25. The conduct by police and City employees described in the preceding paragraphs

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<sup>5</sup> The devastating health impacts of class members’ losses are magnified by the City’s concerted efforts to shut down a number of private charitable food sharing programs. Haynes ¶ 16; Peery ¶ 12(b); Self ¶ 7; Villalonga ¶ 7. Police threats to individuals providing or receiving food in such programs are unlawful, and violate the requirements in Section V of the Consent Decree that the City “respect the rights of homeless people” and that it “prevent harassment of these persons,” Section VI. See also Section I.4 (“the CITY is committed to ensuring that the legal and constitutional rights of all homeless persons be fully respected by all city policies, rules, regulations, practices, officials and personnel”). The City’s actions are unlawful, as there is no statute or ordinance prohibiting food sharing.

is utterly inconsistent with the solemn commitments the City made to “respect the rights of homeless people,” Section V.7, and to “protect the constitutional rights” of all class members, Section VI.9. Strikingly, it is virtually identical to the conduct that Judge Atkins condemned in 1990 as “innately offensive and repulsive,” and “especially horrid.” Order on Plaintiffs’ Second Application for Preliminary Injunction, April 26, 1990, at 1-2. That conduct was a pattern of police sweeps in which City police and other employees systematically seized Plaintiffs’ belongings, “including identification, medication, and clothing” as well as “other personal belongings, which are vital to their survival,” piled them up, and then destroyed them. *Id.* at 2. In April 1990, he ordered the City to cease such activities. *Id.* at 4. Instead, the City continued to engage in them, and a year later Judge Atkins held the City in contempt. Order Finding City of Miami in Civil Contempt of Court’s April 26, 1990 Order and Providing Further Injunctive Relief, March 18, 1991 (“1991 Contempt Order”), at 23-24. He found that City police came to parks or other areas where homeless people stayed and sounded loud alarms to rouse them. The police were accompanied by dump trucks and front-end loaders. They ordered homeless people to leave immediately, giving them insufficient time to gather their belongings, and then proceeded to pile up and destroy what people had not been able to take with them. The property of anyone who was gone when the police and sanitation workers arrived was destroyed, even if it had been left neatly organized in a way that made clear it was not abandoned. Individuals who saw their property being destroyed, and who pleaded to be able to retrieve it, were threatened with arrest instead. 1991 Contempt Order, at 6-9, 13. Referring to a police officer’s testimony in court that the belongings “looked like junk,” Judge Atkins noted that “particularly under these circumstances, value is in the eyes of the beholder, as one man’s junk is another man’s treasure.” *Id.* at 14. He went on:

Any police officer or city worker assigned to the various areas where homeless persons congregate should be well aware that homeless persons use shopping carts, plastic bags

and cardboard boxes as means of transporting their possessions. Any asserted ignorance of this fact insinuates a narrow-minded attitude that this court will not tolerate.

*Id.* He acknowledged, as do Plaintiffs today, the City’s “substantial interest in the effective cleaning and securing of its parks and other public areas.” *Id.* at 20. But that interest was outweighed by “the more immediate harm to class members posed by the destruction of their personal belongings.” *Id.* Indeed, he found that “the public has at least an equally important interest in ensuring that the less fortunate members of society are not deprived of their property rights under the Constitution. Moreover, the public has an interest in homeless persons’ being physically able to seek employment,” which they could not do if leaving their possessions exposed them to the City’s destructive policies. *Id.*

26. The clean-ups systematically violate the property protections these commitments are meant to ensure. In Section VI.9, the City promised to “prevent ... the destruction of the[ Plaintiffs’] property.” This fundamental commitment is spelled out in Section VII.F.1: “The CITY shall respect the personal property of all homeless people.” This commitment binds not only the police but all City employees. *Id.* The commitment entails several specific constraints on City conduct: One is that City departments must “follow their own internal procedures for taking custody of personal property.” *Id.* Apart from those procedures, the City may virtually never destroy property that it knows belongs to a homeless person.<sup>6</sup> Trashing someone’s belongings over their anguished pleas is one example of such a violation; another is trashing someone’s belongings even

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<sup>6</sup> “In no event shall any city official or worker destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e., bedding or clothing and other belongings organized or packaged together in a way indicating it has not been abandoned), except as permissible by law and in accordance with the department’s operating procedure, or if the property is contaminated or otherwise poses a health hazard or obvious safety issue to CITY workers or to members of the public. Notwithstanding any language in the Settlement Agreement to the contrary, the CITY is not responsible for taking custody of mattresses.” Section VII.F.1.



though an individual identifies them as belonging to another homeless person who is temporarily away from the site. Nor may the City treat as abandoned and then destroy homeless persons' property, if it is recognizable as such, simply because it is left unattended. Again, seizing and destroying property that a homeless person has left neatly organized and stacked, in a way that does not block passage on the sidewalk, is a clear-cut violation.

27. There are, as Section VII.F.1 of the Consent Decree makes clear, some exceptions to the City's duty. These involve any property that is contaminated or a health or obvious safety hazard. None of these exceptions applies to the ID, medicine, and other belongings described in the declarations. Indeed, there is no sign that the City makes the kind of individual inspections that would be needed to invoke the exceptions.

28. Another key commitment is that when an individual is arrested, the arresting officer is required to "secure personal items such as identification, medicines and eyeglasses and other small items identified by the arrestee, which are not large and bulky, in accordance with the police department's internal operating procedures." Section VII.F.2.a. With respect to large and bulky items, the police must ensure that they "are not abandoned at the point of arrest, but rather are secured by an outreach worker and maintained in accordance with existing outreach procedures." Section VII.F.2.b. This requirement was blatantly violated in the arrests of Chetwyn Archer and Tabitha Bass, set out below in ¶¶ 30-32 .

29. In conjunction with and also separately from the "clean-ups," the City has violated the police protocol provisions of the Consent Decree. A police order to anyone – homeless or not – to move on or clear out of an area is unlawful if the individual is lawfully present and not violating any statute or ordinance. The declarations document multiple such instances, which violate the City's obligation under the Consent Decree to "respect the rights of homeless people," Section

V.7, and to “protect the constitutional rights” of all class members, Section VI.9. Moreover, Section VII.14.A, an officer is not permitted to approach a homeless person not observed engaging in any criminal conduct except to advise them of “shelter, services, or assistance which are then currently available.” In none of the instances documented in the declarations was there an offer of shelter or other assistance. Moreover, even if somehow a police officer believed a homeless individual was violating one of the life sustaining conduct misdemeanors (LSCMs), but for some reason failed to say so, no warning or threat of arrest for such offenses is permissible unless shelter (not just services) that is currently available is offered to the homeless person and he or she refuses it. Section VII.10.C. Again, as the declarations make clear, City police have been ordering individuals to move on or clear out an area – both in conjunction with the clean-up operations and separately from them, and with an implicit and well understood threat of arrest – without making any offers of available shelter.

30. The arrests of Tabitha Bass and Chetwyn Archer are documented in their Declarations, arrest records, and the police body cams, all provided as Exhibits. They illustrate the City’s numerous violations. Ms. Bass and Mr. Archer were asleep in the morning of March 27, 2018, on a cracked sidewalk on NW Second Avenue, between 14<sup>th</sup> Terrace and 15<sup>th</sup> Street, that dead-ends into an expressway abutment, making it unusable for pedestrian traffic:



Archer ¶ 7. Furthermore, Bass and Archer were not obstructing the non-pedestrian sidewalk, because their bedding, the white mattress above, was pushed against the fence parallel to the sidewalk. Archer ¶ 7; Bass ¶ 5. Nevertheless, seconds after Officer H. Gonzalez arrived on the scene he arrested Mr. Archer for obstructing the sidewalk:



Archer ¶ 7. (Mr. Archer, who expressed great concern for Ms. Bass’s condition, was also arrested for a misdemeanor drug paraphernalia offense (a crack pipe) after the officer asked him, “You’re going to take it, right?”) The police confiscated and destroyed all his property. *Id.* Archer pleaded with the police not to arrest Ms. Bass, hit by a car the day before, her face visibly injured:



Unheeding, Officer C. Gonzalez arrested Bass for obstructing the sidewalk. Bass ¶ 5.

31. The arrest record for Ms. Bass states that they had a mattress on the sidewalk that completely obstructed pedestrian passage. It did not. In any event, the Consent Decree requires the office to first warn the individual in cases where there is a complete obstruction. Only if the warning is disregarded does the violation become an LSCM under Section VII.14.C.3.d. (This is consistent with City of Miami Code § 54-2 (cited in the arrest records), which makes clear that that section is not violated – as to anyone – unless the individual “shall refuse to obey a request by a law enforcement officer to move on; mere refusal to move on is not enough to support the offense – there must be an actual blocking of free passage over, on or along said ... sidewalk.”) No warning



was given. The narrative in Ms. Bass's arrest record virtually admits this. It states that she was "given a warning in several occasions." Whether or not such warnings were in fact given, nothing in Section VII.14.C.3.d permits prior warnings to substitute for a contemporaneous warning. Finally, even if Ms. Bass were somehow considered to be partially obstructing the sidewalk, and even if that were sufficient to constitute a violation of CMC 54-2, the officer did not offer shelter as required under Section VII.14.C.3.d. Again, the body-cams show that no shelter was offered, and the arrest record essentially admits this, claiming that "the defendant *has been offered* homeless placement by the Miami Homeless Assistance Program Staff (the Green Shirts) but refused any assistance" (emphasis added). Past offers of shelter do not constitute "available shelter" under Section VII.11. The narrative in the arrest record for Mr. Archer shows the same violation of the Consent Decree, referring to past warnings and offers of shelter ("The Defendant has been given several warnings in regard to blocking the sidewalk and has been offered shelter. However, the defendant declined shelter and agreed that he would not block the sidewalk again.")<sup>7</sup>

32. Mr. Archer's case was dismissed at his first appearance. Archer ¶ 7. For Ms. Bass's arrest was resolved with a withhold of adjudication and a suspended sentence, by which time the City had confiscated and destroyed all her property. *Id.* Ms. Bass died ten days after her release from jail.

33. Finally, in many instances the City has systematically failed to comply with the documentation requirements. If a police officer approaches a homeless person who is not committing any crime to offer shelter or other assistance, that encounter must be documented in a Field Information Card (FIC). Section VII.14.A (either a new FIC or an update to a prior FIC if assistance was refused in the past 30 days). If the clean-ups are somehow intended to be assistance to

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<sup>7</sup> The arrest records are provided in Exhibits 25 and 26.

the persons living in the area, then the police who supervise each clean-up should document the encounter in FICs. Further, warnings or threats of arrest for committing an LSCM must be documented by an FIC. Section VII.14.C. To the knowledge of Plaintiffs' counsel, however, there are no FICs for the encounters described in the declarations.<sup>8</sup>

### **III. Conclusion and Prayer for Relief**

34. Based on the City's grievous misconduct and the devastating injuries Plaintiffs have suffered as a result, Plaintiffs seek (1) enforcement of the amended consent decree, (2) compensatory damages, (3) attorney fees for filing this action and obtaining any relief, and (4) for this Court to hold the City in contempt and impose a punitive fine.

35. The preliminary showing Plaintiffs have made, and the evidence Plaintiffs will introduce at any evidentiary hearing, establish that the City is systematically violating the Consent Decree this Court entered in 1998, and the amendments to that consent decree to which the City agreed in 2013. At a minimum, this Court must enforce the Consent Decree by ordering the City, a party to it, to comply with each and every one of its provisions.

36. Plaintiffs also seek compensatory damages for injuries they have sustained as a result of the City's wrongful and violative misconduct. These injuries include (1) the destruction of their property, some fungible and some irreplaceable, (2) loss of time needed to replace identification, medication, and other property necessary to day-to-day living on the streets, (3) emotional pain and suffering caused by the ordeal of having all one's property destroyed, being wrongfully

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<sup>8</sup> Plaintiffs' counsel have received the FICs for December 2017 and January 2018, pursuant to Section VIII.15(f), which entitles Plaintiffs' counsel to the FIC in six-month batches. The most recent batch covers through January 2018. When Plaintiffs' counsel first began receiving reports from class members of widespread violations, they made a Public Records Request for the period March 17 through April 12, 2018. Plaintiffs' counsel do not currently have the FICs for February 1-March 16, 2018.

arrested, or being otherwise harassed and disturbed from one's peace and quiet, and (4) the violation of their First, Fourth, Fifth, Eighth, and Fourteenth Amendment rights.<sup>9</sup>

37. Consistent with the Consent Decree and the laws and policies supporting the award of attorney fees for lawyers who assist civil rights claimants to demonstrate violations of their rights and obtain compensatory damages, this Court should award Plaintiffs their attorney fees and costs based on the hours of time they have invested in securing this relief for Plaintiffs and their reasonable hourly rates for these legal services.

38. Lastly, this Court should hold the City in contempt and fine it for its blatant violations of the Consent Decree. The City promised its adherence to the consent decree when it settled all of Plaintiffs claims against it in 1998. It reaffirmed this promise when it benefitted from the modification of the settlement in 2013. The City has intentionally broken these promises by its recent concerted actions. Finding the City in contempt is necessary to vindicate this Court's authority and to deter the City from any future violations.

Wherefore, Plaintiffs request that this Court (1) order the City to abide by each and every provision of the Consent Decree, including ceasing its harassing conduct described herein, which continues to this day; (2) direct that Plaintiffs be compensated for their injuries resulting from the City's recent violations of the Consent Decree; (3) award Plaintiffs their reasonable attorneys' fees and costs; (4) hold the City in contempt and fine it for violating the Consent Decree and to deter any future violations; and (5) provide any and all other relief that this Court deems just and proper.

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<sup>9</sup> If the Court awards damages, Plaintiffs intend to propose damages appropriate to the class action status of this suit and the challenges in individual proof that Plaintiffs face because of their homelessness and the City's actions in proving exact losses. A pool of liquidated damages distributed among injured class members, with any residue devoted to homelessness-related services for all class members, would be a suitable approach.

**CERTIFICATE OF CONFERRAL**

Pursuant to Local Rule 7.1(a)(3), I hereby certify that I conferred with counsel for Defendant in a good faith effort to resolve by agreement the issues raised in this motion, and have been unable to do so. Specifically, Plaintiffs invoked Section XX of the Consent Decree, and contacted the City about a required mediation. After two mediation sessions, the City declared an impasse.

Respectfully submitted,

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BY: /s/ Benjamin S. Waxman  
BENJAMIN S. WAXMAN



### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 30th day of May, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

BY: /s/ Benjamin S. Waxman  
BENJAMIN S. WAXMAN

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**Index to Exhibits in Appendix**

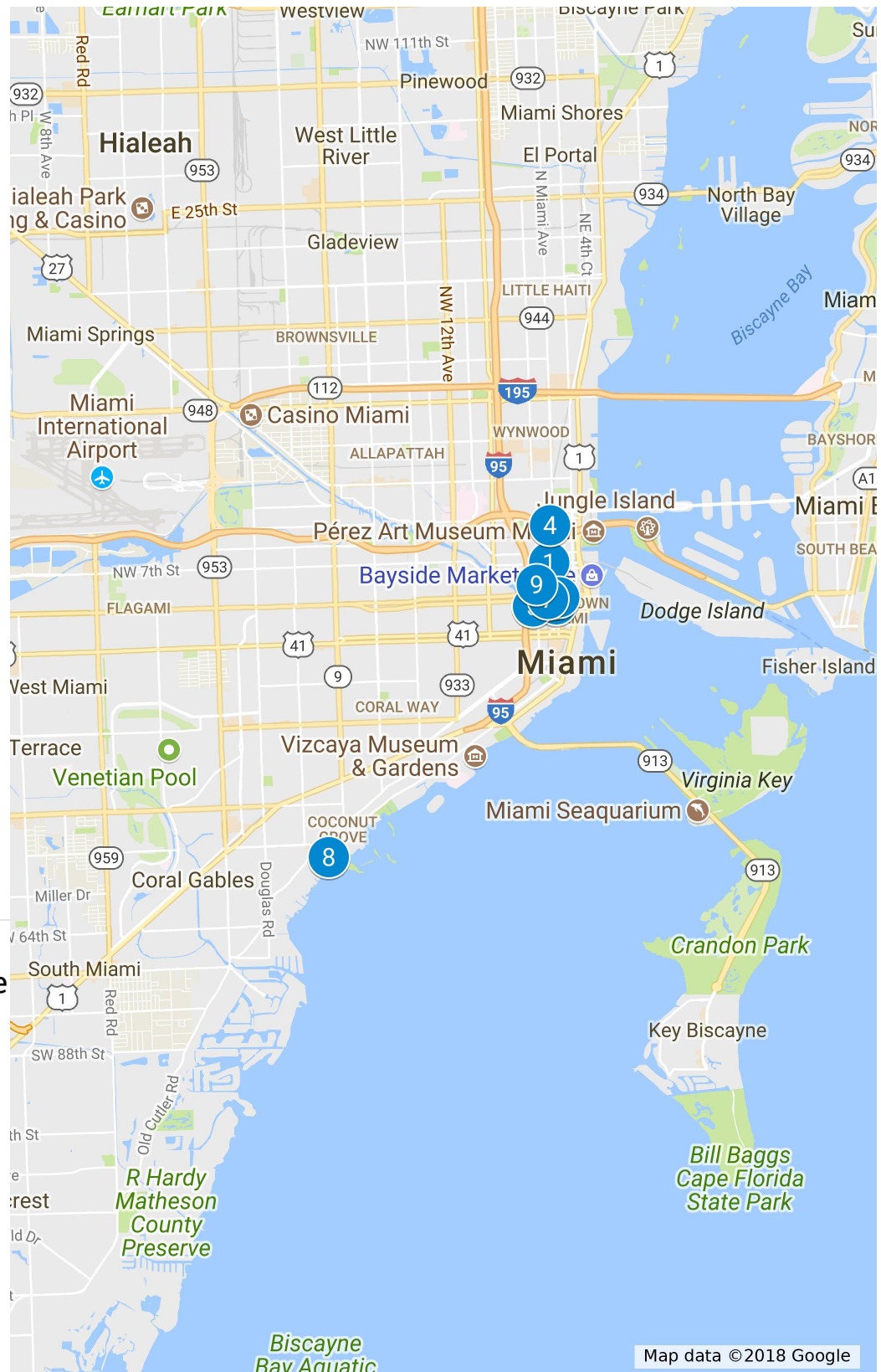
1. Plaintiffs' Motion to Enforce--Violations Map
2. Declaration of Stephen Allen, 4/19/18
3. Declaration of Chetwyn Archer, 4/13/18
4. Declaration of Tabitha Bass, 4/13/18
5. Declaration of Michael Blasko, 4/17/18
6. Declaration of Wilbur Cauley, 5/14/18
7. Declaration of Guthrie Chibangza, 4/20/18
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33. Video taken by Java Houston, 4/12/18 (to be filed separately pursuant to Local Rule 5.3)
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35. Body Cam of Chetwyn Archer/Tabitha Bass Arrests, 3/27/18 (12:42 PM) (to be filed separately pursuant to Local Rule 5.3)
36. Body Cam of Chetwyn Archer/Tabitha Bass Arrests, 3/27/18 (12:45 PM) (to be filed separately pursuant to Local Rule 5.3)

# Exhibit 1-Plaintiffs' Motion to Enforce- Violations Map

Violation Locations (General area;  
not exact addresses)

- 1 Brightline MiamiCentral Station
- 2 FedEx Ship Center, SW 2d Street
- 3 Commonwealth Bldg near Robert's Garage
- 4 Overtown / NW 1st Ave & NW 12th St
- 5 Parking Lot #16
- 6 Macy's, 22 E Flagler St
- 7 Metromover Repair Facility, 95 SW 1st Ave
- 8 Coconut Grove, Peacock Park
- 9 NW 2nd Ave & NW 2d Street, near Gov't Center

For convenience, this map shows the general areas of the locations referenced in the Motion to Enforce or the Declarations attached as Exhibits.



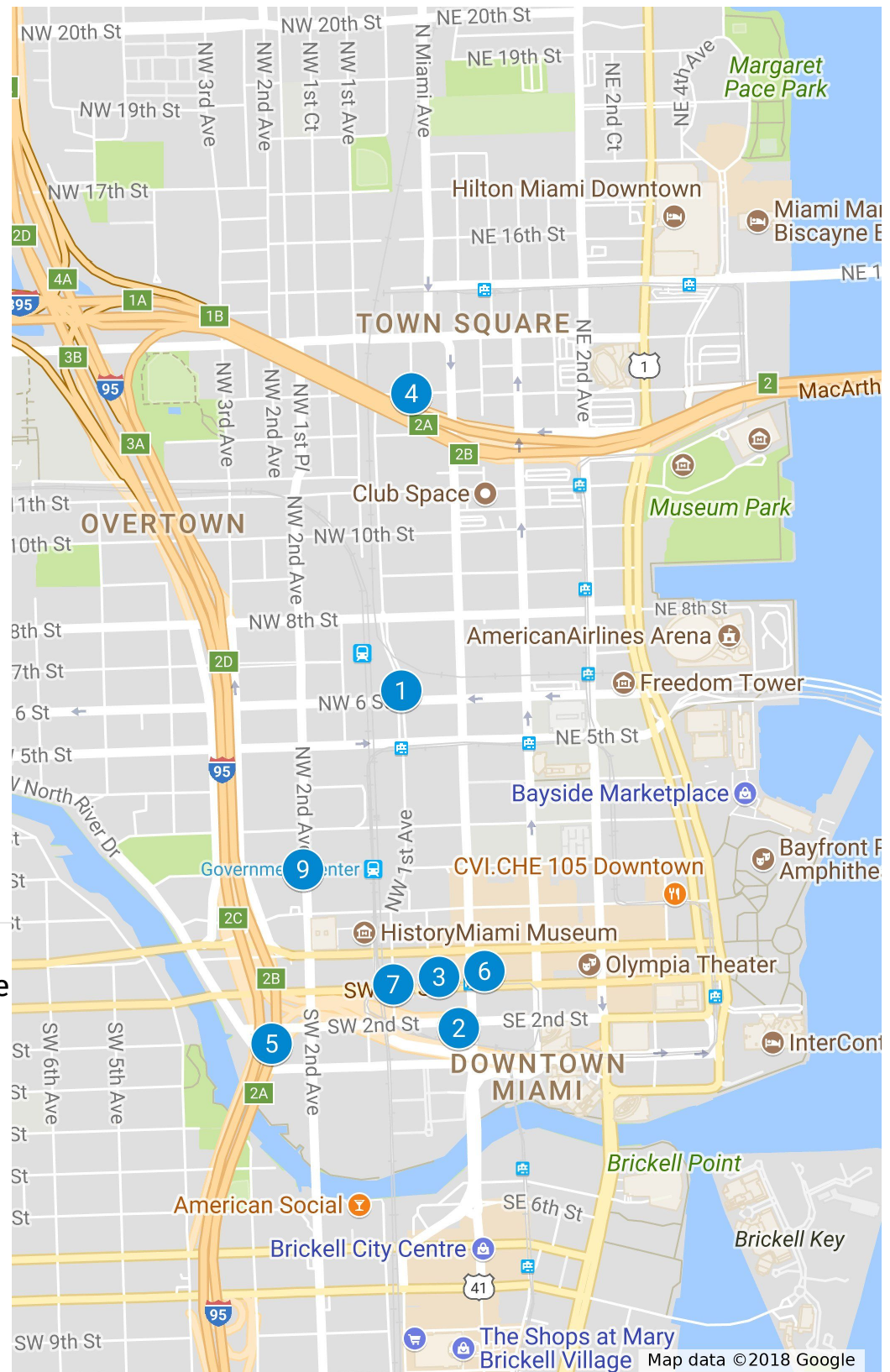


# Exhibit 1-Plaintiffs' Motion to Enforce- Violations Map (Downtown/Overtown)

Violation Locations (General area;  
not exact addresses)

- 1 Brightline MiamiCentral Station
- 2 FedEx Ship Center, SW 2d Street
- 3 Commonwealth Bldg near Robert's Garage
- 4 Overtown / NW 1st Ave & NW 12th St
- 5 Parking Lot #16
- 6 Macy's, 22 E Flagler St
- 7 Metromover Repair Facility, 95 SW 1st Ave
- 8 Coconut Grove, Peacock Park
- 9 NW 2nd Ave & NW 2d Street, near Gov't Center

For convenience, this map shows the general areas of the locations referenced in the Motion to Enforce or the Declarations attached as Exhibits.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

---

**DECLARATION OF STEPHEN ALLEN**

1. My name is Stephen Allen. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami since February 2018.
3. Since Hurricane Irma in September, 2018, I had been sleeping almost every night on the sidewalk on SW 2<sup>nd</sup> Street past the Fed Ex Building near 1<sup>st</sup> Avenue.
4. The only time I would stay at that location is at night when I slept. At night there would be 20-25 people on the street near where I slept. When it got dark, I would put my backpack down on the sidewalk and was always careful not to block the sidewalk. I would usually get up before 6 am and leave the area and go to the library and Camillus House to shower and get food. When I left the location in the morning, I would put my bag, blanket and clothes against a nearby wall. When I left I would leave my things there because there were people who always stayed there that I knew and they would keep an eye on my things when I was away. I always kept my possessions away and made sure they did not block anyone's path. The police in the area would come by and would see us putting our things off to the side when we got up in the

morning.

5. On three dates at three different locations I saw the police approach homeless people who were on the sidewalk and take their possessions. The police would pull up in squad cars along with a white pick-up that had a marking "SFM," which appeared to be a private cleaning service. The police would tell people to move and the city workers would take their possessions from the street and throw them into the pick-up truck. I saw this occur very early in the morning in early March in front of the old Macy's. In mid-October I saw the police do the same thing on SW 2<sup>nd</sup> Street near the Wharf, down from where I was sleeping. Finally, in late March I was near the new Brightline station and I saw the police repeat the same action; they would pull up, get out of their cars, and order people to leave. The City workers would hurriedly come up and take peoples' things and throw them into the back of the pick-up truck.

6. In the middle of February, 2018, the same thing happened to me. When I was staying at the SW 2<sup>nd</sup> Street location, I left early that morning and went about my daily routine. When I returned at the end of the day, I discovered all of my things were gone. I was told that the police had come with the trucks after I had left that morning and had thrown everyone's property into the back of a truck. I also learned that early that same day, a Dodge car commercial had been shot in the area and that the police had cleared everyone out. As a result of the police action, I lost all of my clothes, bedding, sleeping bag, gym bag, and personal items.

7. In the middle of March, at the same location, after I had replaced all of my things had been taken, the Miami police did it to me again. I left in the morning and when I returned, all of my things had been taken. Again, I was told that the police had come with a truck and had taken the possessions of the people who were away.

8. On many occasions I saw the police on a Sunday morning pull up and tell the

church and social services people to move and that they could not serve food on SW 2<sup>nd</sup> Street.

9. I have since moved to a different location.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.


Executed on 04/19/2018  
  
Stephen Allen

Exhibit 3

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

---

**DECLARATION OF CHETWYN ARCHER**

1. My name is Chetwyn Archer. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami for the past 17 months. Most of the time I sleep in Overtown on NW 1<sup>st</sup> Avenue between 11<sup>th</sup> and 13<sup>th</sup> Streets, and also between 14<sup>th</sup> and 15<sup>th</sup> streets, or at the dead end on 2<sup>nd</sup> Avenue between and 14<sup>th</sup> and 15<sup>th</sup> streets.
3. The police have begun harassing the homeless people who sleep in these areas. Every Tuesday and Thursday the police come early in the morning at about 8 a.m. and order all of us to leave so that they can power-wash the sidewalks. They usually give us 5 minutes to gather our stuff and leave. Then City of Miami pickup trucks come, and city workers power-wash the sidewalks where we were sleeping. If someone doesn't leave, they spray them with the power-washers and take their stuff. Most of us take our belongings around the corner, and then return after they're done washing the sidewalks. If someone is not there to claim their belongings, the city workers take them and throw them away, even if the belongings are neatly organized and clearly belong to someone. This has been happening for months now. They only



do the pressure washing in the areas under the bridge where people sleep. They're not doing it in other areas. Some of the workers who come by and do this wear blue shirts and call themselves the Overtown Beautification Team.

4. Right after the new Mayor of Miami was elected, he and a team of City officials did a walk-through of the area. There were around 30 or 40 <sup>OFFICERS + OFFICERS</sup> police cars with him. One of the city employees told me that the Mayor's pet peeve is "the Bridge," which refers to the 395 overpass in that area, where around 40 people were sleeping at that time.

5. In early December of 2017, I and about 10 other homeless people were standing between 13th and 14th streets. Each of us had sets of belonging that we kept close by. The police arrived and told all of us that we had to leave and move all of our stuff. Since many of us could not carry all of our things, a police officer told us that if we put our stuff in an empty lot next to an apartment building at 1302 NW 1<sup>st</sup> Place, it would not be touched because it was on private property and not on the sidewalk. <sup>I SPOKE TO</sup> The police officer said he spoke to the manager of the apartment building, and the manager said we could leave our stuff there. About 10 homeless people, including me, carried our belongings and put them in the empty lot next to 1302. We arranged everything neatly so it was clear that it belonged to someone. I left and went to Camillus House. I returned about an hour and a half later and all our stuff was gone. Later on, the manager of the apartment complex told me that he had been threatened by the police with code violations if he didn't say he didn't want the belongings on his property, so that's what he said, and the police took the belongings away.

6. I lost almost everything I had, including family pictures that cannot be replaced, my birth certificate, social security card, tools, and my writings. I write frequently and I had dozens of sheets of writing on them. Other people's belongings, which were taken, included <sup>A MOVIE 3/4 WRITTEN OUT.</sup>

suitcases, shopping carts, clothing, blankets, shoes, work clothes, medicines, toiletries, phones, and jackets. Losing the jackets was particularly difficult because it was cold at that time.

7. On March 27, 2018, I was asleep between 14<sup>th</sup> terrace and 15<sup>th</sup> street where's there's a dead end. I was sleeping parallel to the sidewalk up against the fence. There was plenty of room for people to walk by. Even a wheelchair could have easily gone past me. City of Miami Police Officer Gonzalez (a man) suddenly appeared and woke me up. I'm familiar with Officer Gonzalez because he's around that area a lot. He told me to stand up. I did, and he immediately put hand cuffs on me. I asked why I was being arrested, and he said for obstructing the sidewalk. I asked whether he could just issue me a Promise to Appear, and he said no, he had to arrest me. He said you better find somewhere else to be because every time we see you we're going to arrest you. He did not warn me to move. He did not offer to take me to a shelter. He put me in the back of the police car and took me to jail (TGK). Gonzalez did not take any of my property with me, and I lost all of it. I was booked into jail, and the case was thrown out at my First Appearance.


8. On April 10, 2018, around 8:30 a.m., about 7 police cars and 9 officers pulled up to the same area where the dead end is, where many people were sleeping. One of the "green shirts," Wayne, was with them. The police team was led by Officer Gonzalez. There was also a big bulk garbage truck with the arm and scooper used for picking up bulky trash items. Gonzalez said to us, "now we're taking everything." They told us that they were going to review all of our stuff, and if they deemed it "contaminated," they were going to take it. Wayne started going through and pointing at different items. They immediately went to an area where a woman named Margo sleeps. She wasn't there at that time. They scooped up her belongings and put them in the garbage truck. When they came to me, they wanted to take a box of stuffed animals,

my comforters, clothes, and books. They wanted to leave me with one sheet. I argued with them, and convinced them to let me keep my stuffed animals, and some clothes, and <sup>3</sup>7 books. But they ended up taking 25 of my books and some clothing. I heard one officer say that we're only allowed to keep personal hygiene items, which means anything we can carry in 30 seconds. They told us that we better not be here next Tuesday, because they were going to come back and do it again.

9. I saw them go over to a man we call Rhode Island Red, who was sleeping. They woke him up and told him to take what he could carry and leave. He asked them to give him a minute so that he could wake up. They said no. He was only able to walk away with his backpack. They took his sleeping bag, cell phone, charger, blanket, and clothing, and threw it in the garbage truck. An officer told him that if he ever came back he would be arrested.

10. Many homeless people were not there at that time, and the city workers took all of the belongings that were there with the big scooper and put them in the garbage truck, even though most of it was neatly arranged and clearly belonged to someone. This included bedding, clothing, suitcases, phones, medicines, paperwork, shoes, and other things.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on 4-13-2018  
  
Chetwyn Archer

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

---

**DECLARATION OF TABITHA BASS**

1. My name is Tabitha Bass. I am over the age of 18.
2. I am currently homeless and have lived on and off the streets of the City of Miami for a long time. Much of the time I sleep in Overtown on NW 1<sup>st</sup> Avenue between 11<sup>th</sup> and 13<sup>th</sup> Streets, and also between 14<sup>th</sup> and 15<sup>th</sup> streets, or at the dead end on 2<sup>nd</sup> Avenue between and 14<sup>th</sup> and 15<sup>th</sup> streets.
3. The police have begun harassing the homeless people who sleep in these areas. Every Tuesday and Thursday the police come early in the morning at about 8 a.m. and order all of us to leave so that they can power-wash the sidewalks. They usually give us 5 minutes to gather our stuff and leave. Then City of Miami pickup trucks come, and city workers power-wash the sidewalks where we were sleeping. If someone doesn't leave, they spray them with the power-washers and take their stuff. Most of us take our belongings around the corner, and then return after they're done washing the sidewalks. If someone is not there to claim their belongings, the city workers take them and throw them away, even if the belongings are neatly organized and clearly belong to someone. This has been happening for months now. They only

do the pressure washing in the areas under the bridge where people sleep. They're not doing it in other areas. Some of the workers who come by and do this wear blue shirts and call themselves the Overtown Beautification Team.

4. At some point in December of 2017, I had left my belongings where several homeless people typically sleep between 13th and 14th streets. My belongings included toiletries that I had just bought, clothes, and shoes. When I returned later, everybody's stuff was gone, including mine. I was told that the police had come and taken everything.

5. On March 27, 2018, I was asleep between 14<sup>th</sup> terrace and 15<sup>th</sup> street where's there's a dead end. I was sleeping parallel to the sidewalk up against the fence. There was plenty of room for people to walk by. City of Miami Police Officer Gonzalez (a woman) suddenly appeared and woke me up. She asked me if I had a Florida I.D. I told her no, and she said unfortunately I have to take you in. I asked her why, and she told me because we need you guys to have I.D. I asked her why she was arresting me, and she told me obstructing the sidewalk. She did not warn me first. She did not offer to take me to a shelter. She put me in the back of the police car and took me to jail (TGK). Gonzalez did not take any of my property with me, and I lost all of it. I was booked into jail, and the case was thrown out at my First Appearance.

6. On April 10, 2018, around 8:30 a.m., several police cars and officers pulled up to the same area where the dead end is, where many people were sleeping. One of the "green shirts," Wayne, was with them. The police team was led by Officer Gonzalez. There was also a big bulk garbage truck with the arm and scooper used for picking up bulky trash items. They told us that they were going to review all of our stuff, and if they deemed it "contaminated," they were going to take it. Wayne started going through and pointing at different items. They

immediately went to an area where a woman named Margo sleeps. She wasn't there at that time. They scooped up her belongings and put them in the garbage truck.

7. When they got to me, an officer told me that we're only allowed to keep personal hygiene items, which means anything we can carry in 30 seconds. They took everything I had, including a bike. They told us that we better not be here next Tuesday, because they were going to come back and do it again.

8. I saw them go over to a man we call Rhode Island Red, who was sleeping. They woke him up and told him to take what he could carry and leave. He asked them to give him a minute so that he could wake up. They said no. He was only able to walk away with his backpack. They took his sleeping bag, cell phone, charger, blanket, and clothing, and threw it in the garbage truck. An officer told him that if he ever came back he would be arrested.

9. Many homeless people were not there at that time, and the city workers took all of the belongings that were there with the big scooper and put them in the garbage truck, even though most of it was neatly arranged and clearly belonged to someone. This included bedding, clothing, suitcases, phones, medicines, paperwork, shoes, and other things.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on 4/13/18.

Tabitha M Bass  
Tabitha Bass

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

DECLARATION OF MICHAEL BLASKO

1. My name is Michael Blasko. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami since February 2018.
3. Beginning in late February and in early March 2018, I had been sleeping almost every night on the sidewalk on SW 2<sup>nd</sup> Street past the Fed Ex Building near 1<sup>st</sup> Avenue.
4. The only time I would stay at that location is at night when I slept. At night there would be 20-25 people on the street near where I slept. When it got dark, I would put my sleeping bag down on the sidewalk and was always careful not to block the sidewalk. I would usually get up before 6 am and leave the area and go to the library and Camillus House to shower and get food. When I left the location in the morning, I would put my bag and blanket against a nearby wall and cover it with a small tarp. I always kept my possessions away and made sure they did not block anyone's path. The police in the area and would come by and would see us putting our things off to the side when we got up in the morning.
5. Further down SW 2<sup>nd</sup> Street near the Wharf and very early in the morning, the

police would pull up next to the people on the street and shine their lights and sound their car buzzer to wake people up. I could see and hear what the police were doing down the street from where I was staying.

6. During the last week of March, 2018, the police put signs on the fence near where we stayed which told us they were going to clean up the area and that we should call the outreach number for shelter assistance. I called that number several times and was told they did not have beds available at that time.

7. A few days later I got up as I usually did and went to the library and Camillus House. When I returned later that day, all of my personal possessions, my bag, blankets and clothes, were missing and gone. I was told that the police had come with pick-up trucks and had thrown everyone's things away.

8. I have since moved to a different location.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on April 17, 2018

Michael Blasko  
Michael Blasko



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

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**DECLARATION OF WILBUR CAULEY**

1. My name is Wilbur Cauley. I am over the age of 18.
2. I am disabled veteran of the US Army.
3. I am currently homeless and have lived on the streets of the City of Miami for the past two years.
4. For the past several months, I have been sleeping almost every night on the sidewalk under the overpass at NW 1<sup>st</sup> Court and NW 13<sup>th</sup> Street.
5. At that location at night, I put my blankets on the sidewalk against the fence so that I do not block anyone from walking on the sidewalk. I keep my personal items neatly collected and bundled so that they do not obstruct the sidewalk.
6. On April 17, 2018, I got up at approximately 7:00 a.m. Several days before, the City of Miami had posted a notice that they were going to clean the sidewalk under the overpass and that people had to move their possessions from that location. So, when I got up, in anticipation of the power washing of the sidewalk, I moved my personal items up NW 1<sup>st</sup> Court from under the overpass to a spot on the sidewalk where they would not be in the way of the

cleaning.

7. At around 9:30 a.m., I went to get a soda at the grocery store which is less than a half a block away from where I sleep. I left my personal items on the sidewalk where I had moved them to. People I know were near my property and were keeping an eye on it.

8. I went into the store for just a few minutes and when I walked out of the store, people down the block near where my property were yelling for me to come back.

9. I quickly hurried back and when I returned, a city worker who was physically large and wearing a green shirt was going through my personal items and kicking them around on the ground. I went up to the man and told him that those were my things. I asked to get them back and he told me that they were being thrown away. He aggressively grabbed my arm and prevented me from getting my property. I kept telling him that everything I own, including my identification, was on the ground and that I needed them. I pleaded with him to allow me to get my property. He refused and told me that I did not need the property because I was going to the shelter. I told him I still needed my property, especially my identification. The man then threw my property into a large pile and stood over the pile. He balled his fist and threatened anyone who tried to get their things. There were other city workers in the area who were helping gather homeless people's property and throwing it away.

10. All my property was thrown into a truck and taken away. I lost my identification, clothes, shoes, personal items, papers, and some blankets.

11. Shortly after, I went up to a female city worker and asked if I could go to the shelter. The same large man in a green shirt who threw my property away came up and told the woman not to take me to the shelter because I "disrespected" him.

12. To my knowledge, no one from that location was taken to the shelter.

13. Many of the events I described above were captured on video.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on 5/18.

may 14 Wilbur Cauley  
Wilbur Cauley

Exhibit 7

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 88-2406-CIV-MORENO**

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

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**DECLARATION OF GUTHRIE CHIBANGUZA**

1. My name is Guthrie Chibanguza. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami for about a month and a half. Up until recently, I would sleep and store my things on the sidewalk behind Macy's in downtown Miami. About five other homeless people would do the same thing. All of us had belongings with us.
3. About a month ago, right after the Ultra Music Festival, at about 6 p.m., two Miami police officers wearing yellow shirts approached us and told us that we could not stay there and had to leave, and that we would be arrested if we didn't leave. We were on the sidewalk but not blocking it. People could walk by us. The officers did not offer to take us to a shelter. If I had been offered shelter, I would have accepted it. Most of us gathered what we could carry and walked over to a bus stop and sat down on the bench. The officers followed us and told us we could not stay there either. We left and went to the area around the Fedex building on 2<sup>nd</sup> street.
4. A sign was put up on the other side of Macy's saying that people had to leave the

area by a certain day. But no sign was put up on the side where I was staying, so I had no warning about what was going to happen.

5. One morning, I and several other homeless people neatly packed up our stuff and hid it by a steel enclosure by the Macy's. It was out of the way, not blocking the sidewalk, and clearly belonged to someone. I left in the morning, and when I came back, all off our stuff was gone. I was told by other people who were there that police officers in yellow shirts had come and taken our belongings. I lost nearly everything I owned, including clothes, bank statements, glasses, toiletries, and blankets.


6. A few days later, we tried hiding our stuff in an even more secret location in some bushes to get it out of the way. But the same thing happened: I left in the morning and when I returned my stuff was gone. I was told the police had taken it.

7. I've talked to numerous people on the streets recently, and nearly everyone had had this happen to them: the police have been telling them to move and have been taking their things.

8. I have since moved to a different location in Miami.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on 4-20-18.

  
Guthrie Chibanguza

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,  
v.

CITY OF MIAMI,

Defendant.

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**DECLARATION OF MICHAEL DONALD**

1. My name is Michael Donald. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami for about the past 3 and half years.
3. I am a veteran of the United States Army. From 1985 to 1988 I was an Army Ranger. From 2002 to 2007 I worked for a defense contractor performing security services in Iraq. In 2007, I was hit with an improvised explosive device (IED), and I was severely injured. I suffered a traumatic brain injury and have been diagnosed with PTSD. I have a metal rod in my leg. I have not worked since 2007.
4. Up until recently, most days I stayed and slept on the sidewalk on SW 2<sup>nd</sup> Street by the Miami River, outside of the parking lot called Lot 16. There used to be many homeless people who slept there. This area is up the street from The Wharf, which is on the river. Customers have started using Lot 16 to park when they visited The Wharf.
5. Beginning in roughly January of 2018, the City started power-washing the sidewalks two or three times per week in that area where homeless people slept and kept their

property. Every morning when they did the power-washing, police officers would show up at around 5 or 6 a.m., get on their loudspeakers, and tell everyone that they had to take their stuff and leave. Most days, I would pack up my tent and other belongings and go around the corner to wait for the power-washing to finish. At some point after the police made the announcement, city workers would come by and power-wash the sidewalks. If there were any personal belongings left on the sidewalk, the workers would take them and throw them away. All of the property obviously belonged to someone. It was not abandoned. I was never personally offered shelter during any of this.

6. The only streets that were power-washed were the ones where homeless people were staying. They didn't wash any other streets.

7. Most of the homeless people I knew in that area, including me, became very afraid to be there, because we were afraid of losing everything we had.

8. Attached to this declaration is a picture I took of city employees telling homeless people to leave. The picture is from January 2018 and is taken from the 2<sup>nd</sup> street bridge. It shows police officers telling homeless people that they had to leave and take their stuff. If they left stuff behind, or if there were other belongings on the sidewalk, the workers would put it in the back of the white pickup truck.

9. One day, some time in early to mid January of 2018, I was not there on one of the power-washing days, but I had left my stuff there. When I returned, all of my stuff was gone. I heard that there had been a power-washing. I lost everything I owned, including a tent, clothing, medications, and other personal items. A picture of my tent is attached to this declaration. I took the picture in January of 2018. It shows 2<sup>nd</sup> street facing east, away from the river. The medications I lost included Zomig nasal spray, which I take for migraines, and which cost \$75

each. It was very difficult for me to be without that medication.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on Apr 118, 2018

  
Michael Donald









313 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

DECLARATION OF EDDIE FISHER

1. My name is Eddie Fisher. I am over the age of 18.
2. I am currently homeless and live on the streets of the City of Miami.
3. Recently, I have been sleeping on the sidewalk at Miami Avenue and 6<sup>th</sup> Street, near the new rail station.
4. There are other homeless people who sleep and stay in that area.
5. At that location, I lay a sleeping bag and a blanket down on the sidewalk. I keep my personal possessions in a bag and a suitcase. I position myself and my property in such a way as to not obstruct the sidewalk so that people have enough room to walk by.
6. Earlier this month during the first week or so in May, at approximately 10:30 a.m., I went to the store which is about a block away to get something to eat.
7. When I left to go to the store, I put my pillow and blankets in my bag along with my suitcase off to the side so that they would not be in anyone's way. I have done this before and have never had a problem. It was clear to anyone from the way that I left them that the bag and suitcase were not abandoned.

20 minutes Eddie Fisher

8. When I returned from the store approximately a half hour later, there were city workers who were picking up people's property and throwing it in the back of the truck.

9. I saw the city workers take my bag and suitcase and throw it away. When I told them those were my things they ignored me and would not let me get them.

10. As a result of what the city workers did, I lost my Florida identification, medication, eye glasses, clothes and shoes. I also lost my blankets and pillows which I use to sleep on the ground.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on

5-26-18

Eddie Fisher

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

DECLARATION OF TERRY FLUKER

1. My name is Terry Fluker. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami for the past two years.
3. During March of this year, I had been sleeping almost every night on the sidewalk near the front of the Macy's department store on Flagler Street in downtown Miami. At that location there were usually five to six people sleeping on the sidewalk on my side of the street and another five to six who were on the other side of the street.
4. One morning in early March, very early, between 5:00 and 6:00 a.m., the Miami police drove up to where we were sleeping on Flagler Street and told us that we had to move and that we could not stay there anymore. I was not blocking the sidewalk and the police did not offer me shelter. There were two police cars, vans and a pick-up truck. People in green shirts came up to the group and took people's property and threw the personal items into the back of the pick-up truck. One person took my backpack and threw it into the truck. I asked the person why he took my backpack and he said, "we owe you no explanations." I tried to get my

backpack but they would not let me get it. Inside the backpack I had clothes and personal items, including my Florida identification card and my social security card.

5. I did not return to sleep on the sidewalk in front of the Macy's building. I then moved to the sidewalk at SW 2<sup>nd</sup> Street between SW 2<sup>nd</sup> Avenue and SW River Drive. Just after relocating there, one morning at approximately 8:00 a.m., a police officer drove up to where I was sitting on the sidewalk and told me that I could not stay there. I was not blocking the sidewalk and the officer did not offer me shelter. I left that area also and have not returned. TF

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on

APR 13 2018

Terry Fluker

Terry Fluker

but I did return  
a couple times  
to get food  
TF

**313 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 88-2406-CIV-MORENO**

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

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**DECLARATION OF WILLIE GRANT**

1. My name is Willie Grant. I am over the age of 18.
2. Approximately two years ago my leg was amputated as a result of an accident where I was run over by a car. I am currently in a wheelchair.
3. Because of the accident, I was no longer able to work as a construction worker and I became homeless.
4. In addition to my medical struggles with the loss of my leg, I also suffer from asthma.
5. I am currently homeless and live on the streets of the City of Miami.
6. Over the past several weeks, I have been sleeping on the sidewalk at NW 2<sup>nd</sup> Avenue and 2<sup>nd</sup> ~~Avenue~~ <sup>streets</sup>, on the west side of the street near the Government Center.
7. There is a small group of other homeless people who sleep on the sidewalk there.
8. At that location, I lay a sleeping bag and a blanket down on the sidewalk and get out of my chair and sleep on the sidewalk. I keep my personal possessions in a book bag and put my chair next to me so that I have access to it. I position myself, my chair and my property in

such a way as to not obstruct the sidewalk so that people have enough room to walk by.

9. On Thursday, May 17, at approximately 7:30 a.m., I got up and went about a half a block away behind a building to use a water faucet to clean up. I left my bag and my blankets neatly bundled so that they would not be in anyone's way. I asked another person who was nearby to watch my things while I was gone. Because of my condition it takes a longer than usual time to clean up and wash myself. I was gone at least 30-45 minutes.

10. When I returned, all my property was gone. I was told by the person who was watching my things that city workers came by and took my things and threw them away. He said he tried to stop them but that they would not let him secure my property because it was "abandoned."

11. The loss of my property was devastating. In my book bag I had clothes, my Florida identification, head phones, my phone, \$25, and most importantly, my asthma medicine and pumps.

12. Shortly after this happened and because of the stress this caused, I had an asthma attack and had to go Jackson Memorial Hospital where I was admitted for three days. The loss of my things has been extremely difficult and I am currently in the process of getting another ID, which is essential for me to get medications.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.


Executed on 5/23/18  
  
Willie Grant



Exhibit 12

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

DECLARATION OF ELLIS HAYNES

1. My name is Ellis Haynes. I am over the age of 18.
2. I have been homeless in the City of Miami for over 7 years. For about the last 2 years, I've been sleeping almost every night on the sidewalk on SW 2nd Street, between SW 2nd Ave. and NW North River Dr.
3. Before a couple of weeks ago, there were at least 20 other homeless people who were sleeping in the same area. As of March 30, 2018, there are none. I don't know where they went.
4. At some point in December 2017, the city of Miami started power washing the sidewalks after The Wharf [Outdoor Bar] had opened on NW North River Dr., in that area twice a week, on Tuesday and Thursdays. Before then, I had never seen the sidewalks be power washed.
5. The Wharf is located at 114 SW North River Dr. 33130 on the river. Customers started using Lot 16 to park when they visited The Wharf. Lot 16 is a City of Miami parking lot located at SW 2nd Street and SW 2nd Ave.

6. Each morning of the power washing, the police would come early in the morning just before daylight to announce that everyone had to move, because the sidewalks along SW 2nd Street were going to be power washed. They did not offer shelter. Then a sub-contractor truck would come, and several workers would unload power washing machines and power wash the sidewalks by spraying at high speeds. They did not wash the streets. This happened every Tuesday and Thursday.

7. On most of the power washing days, the homeless people, including me, would take our things around the corner to the next street over, where the power washing was not happening. After the sidewalk was dry, we would move back to SW 2nd Street.

8. On January 17, 2018, a Miami police officer named Officer Galvez arrived early in the morning, around 7 or 8 a.m. At that time there were three homeless people sleeping in tents. The three people started to take down tents, Galvez told them they had to take their stuff and leave. He didn't offer to take anyone to a shelter. The same thing happened on January 19, 2018. On that day, I wrote an email to the ACLU to document what happened.

9. There is a Hispanic homeless man who slept on SW 2nd Street who was called "Columbia" [Fernando A. Guerrero]. He had tied a plastic sheet to the fence to create something like a tent. On February 9, 2018, Officer Galvez arrived with other City cleanup workers at about 10:30 a.m., when Columbia wasn't there. They went straight for Columbia's tent and other belongings. Galvez and the city workers picked up Columbia's stuff and were putting it in the back of a white pickup truck with the City of Miami logo on it. This included his plastic sheet, his guitar, his cooking equipment, clothes and food. His belongings were not on the sidewalk. They were neatly arranged in the dirt. Officer Galvez knew it was Columbia's property.

10. On February 20, 2018, Officer Galvez pulled up in his car right in front of me

with its lights flashing. He was clearly trying intimidate us into leaving. I immediately jotted down a note in my phone.

11. On March 26, 2018, one of the City of Miami “green shirts” came to SW 2<sup>nd</sup> Street and post a sign to the chain-link fence. I took a picture of it, and the picture is attached to this declaration. The sign said: “NOTICE: Be advised that this area will be cleaned on March 29<sup>th</sup>, 2018. **Please remove all personal belongings from the site.** If you would like to relocate to emergency housing, please call 1-877-994-4357 (HELP) or contract the outreach workers whom will be vising the area frequently. Thank you.” I’ve never seen them post a notice like this before. I asked the green shirt what was going on. He told me that I had to leave the area. He said shelter would be offered, but he didn’t offer it to me at that time. There was also a trash truck with a police escort picking up crates and other furniture. The guy in the trash truck said the City of Miami was fed up with us (homeless people). I immediately emailed the ACLU.

12. I was on 2<sup>nd</sup> street all day on March 29<sup>th</sup>. They did not come and clean that day.

13. On March 30, 2018, Officer Galvez came to the area with Officer Lazcano at about 7:20 a.m. Galvez again told us we had to leave and not come back. He did not offer any shelter. He also told us that groups would not be allowed to do feedings in that area anymore, and that they would have to be done at the Salvation Army. There was no power-washing that day, but later that day at around 4:30 p.m., Officer Galvez came back with other city workers in pickup trucks. Galvez again told everyone to take their stuff and leave and not to come back. I started to pack up my stuff, and I saw city workers pick up the belongings of several homeless people and throw them in the truck. The things were organized neatly so it was clear that they belonged to a homeless person.

14. For example, I saw City workers take the belongings of a homeless man named

Robert. Robert's stuff was neatly organized and clearly belonged to someone. It included a suitcase, a black trash bag with blankets, books, and food. The City took it all and threw it in the truck. They tried to take Columbia's things, but he showed up and was able to get some of it back. That day there were only about 7 homeless people out there. I emailed the ACLU about this.

15. There was also a bus from Camillus House with them. People were in the van asking if we wanted to go to Camillus House.

16. On March 31, 2018, there was a group giving out food. I think it was part of a church. Galvez and Lazcano arrived and told the operators that they could finish that day's feeding, but in the future they would not be allowed to do any more feedings in that location.

17. I have since moved out of that area to avoid the repeated harassment by the City.

18. On Saturday, April 14, 2018, at about 12:20 p.m., there was a group giving out food on SW 2<sup>nd</sup> street, on the east side of the street on the sidewalk. I had gotten some food when Officer Galvez pulled up. He told the group that they could not give out food here, and they had to go to the Salvation Army on 21<sup>st</sup> street. The group packed up and left.

19. I heard later from several people that white City of Miami pickup trucks came to that area around 4:30 p.m. and picked up the personal belongings of homeless people in all the parking lots in the area.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on 4-16, 2018

Ellis E. Haynes Jr.  
Ellis Haynes





UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

DECLARATION OF WILBERT HILL

1. My name is Wilbert Hill. I am over the age of 18.
2. I am currently homeless and live on the streets of the City of Miami.
3. Since March of this year, I have had my personal property taken by the City of Miami on two separate occasions.
4. On both occasions my property was taken from where I sleep on the sidewalk at Miami Avenue and 6<sup>th</sup> Street in downtown Miami near the new rail station.
5. There is a small group of other homeless people who sleep on the sidewalk there.
6. At that location, I lay a sleeping bag and a blanket down on the sidewalk and keep my personal possessions neatly bundled in bags. I position myself and my property in such a way as to not obstruct the sidewalk so that people have enough room to walk by.
7. The first incident involving the taking of my property occurred in mid-March.
8. That morning I went to Camillus House at approximately 8:30 a.m. When I left I put my things out of the way and placed them in neat order away from sidewalk so that they would not be in anyone's way.

9. I asked a guy who had been staying there named "Steve" to keep an eye on my property while I was gone. It was common among the small group of men who slept at that location to watch over each other's things when someone left. During the day I often leave to go to the library or Camillus or one of the shelters to get something to eat or to get medical attention.

10. When I returned later that day, my property was gone. Everything was missing.

11. I was told that city workers and the police had come by after I had left that morning and that they took and threw away all the property of homeless people who were not there to protect it, and that the police would not allow the people who were there to safeguard other people's property.

12. As a result, I lost all my property which included medicine, clothes, a sleeping bag and a radio. This was very difficult because I lost my diabetes medicine and a medication I take for acid reflux, *AND FOR MY HEART. W-H*

13. I lost my property a second time earlier this month on what I remember to be the first Friday of May.

14. That morning I got up very early, at approximately 5:30-6:00 a.m. to go to Camillus House. As before, I left my things neatly arranged and out of the way. Again, a person who sleeps there agreed to watch my property. I went to Camillus House to try to be one of the first persons there to get a bed. They did not have a bed to offer me but I was allowed to take a shower and got something to eat. I then went to a doctor appointment at 1:30 p.m. at 29<sup>th</sup> and Biscayne.

15. When I returned later that day, again, all my property was gone. I was told again that the city workers and police had done the same thing as before and had taken and thrown my

property away.

16. As a result, I lost clothes, another sleeping bag, another radio and, most importantly, my medication.

17. Now, whenever I leave from where I sleep, I always take my medication with me.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on 5-21-2018

Wilbert Hill  
Wilbert Hill



Exhibit 14

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

---

**DECLARATION OF JAVA HOUSTON**

1. My name is Java Houston. I am over the age of 18.
2. I am currently homeless and have lived on the streets of downtown Miami since August 2017.
3. In late March and in April of 2018, I had been sleeping almost every night on the sidewalk on SW 1<sup>st</sup> Street and Miami Avenue in downtown Miami.
4. At that location, I would put a cardboard pallet on the sidewalk and sleep on blankets close to the building. I would keep my bag next to me, out of the way of others. The sidewalk there is wide enough so that I was always able to position myself so that there was plenty of room for people to pass. I stayed there because churches and social service agencies would serve food at that location. There were other people who slept on the sidewalk nearby but there was always room for people to walk and we never were positioned ourselves in a way to obstruct others.
5. In the early evening of Thursday, April 12, 2018, at approximately 8:00 pm, I had put my things down at that location to sleep for the night. I was in my usual position on the


sidewalk and was not blocking anyone from walking on the sidewalk. There were a few other people in the same area but no one was blocking the sidewalk.

6. Five to six Miami police officers rode up to us on bicycles and told us that we could not stay there and that we had to leave, immediately. I asked the officers if there was room at the shelters and they told me there was no available beds at the shelter. I then asked the officer how it could be that the shelters were filled. He again told me that I had to leave, "Now!" I asked the officer for his name and he said, "You need to get your stuff and leave!" I began to pick up my things and asked the officer where I could go and stay for the night. The officer responded by telling me that "I'm not telling you anymore, you gotta leave." I took my things and left. I filmed the encounter on my cellphone.

7. On March 27, 2018, at approximately 5:00 pm, I was at the same location and was sitting on a bus bench. I was waiting for the social services people to arrive and get some food. There were other homeless people who were near where I was sitting. We were all there simply waiting to get something to eat. I, and the others, were not blocking the sidewalk. Miami police officers came up to us and told us that we had to move, and that we could not stay there. One of the officers took photos of us and threatened to arrest me and the others. The officer said that if we did not move, he would lock us up. I complied with the officer's order and moved, even though I had done nothing wrong.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on

4/19/18  
  
Java Houston

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

---

**DECLARATION OF MARKELL KING**

1. My name is Markell King. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami for the past two years.
3. For the past several months, I have been sleeping almost every night on the east sidewalk under the overpass at NW 1<sup>st</sup> Court and NW 13<sup>th</sup> Street.
4. At that location at night, I put my blankets on the sidewalk against the fence so that I do not block anyone from walking on the sidewalk. I keep my personal items in a suitcase and my other things are neatly collected and bundled so that they do not obstruct the sidewalk.
5. On April 17, 2018, at some time after 9:00 a.m., I went to get food at "Sisters," located at NW 7<sup>th</sup> Avenue and 15<sup>th</sup> Street, a place where food is distributed to the homeless.
6. When I returned at approximately 11:30 a.m., all my property was gone.
7. I observed city workers putting people's property in a truck, throwing it away.
8. I saw my property being put into the back of a truck and when I tried to get it back, I was told by the green shirts that there was nothing I could do, that "these are the rules,"

and that "it's clean up day" and you're too late.

9. I asked the police who were present for help and while they were sympathetic to what was happening to me, they told me that they could do nothing because their hands were tied.

10. As a result, I lost my clothes, shoes, blankets, birth certificate, medication, personal papers, and old I-pad, and a phone.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on

May 14, 2009  
  
Markell King

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

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**DECLARATION OF ROBERT LANE**

1. My name is Robert Lane. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami for the past three years.
3. On what I believe to be February 20, 2018, although I am not certain of the exact date, I was staying at and sleeping on the street at SW 1<sup>st</sup> Street at the Commonwealth Building, across from Robert's Garage. At 5:30 in the morning, the police did a sweep and cleared everyone from the several block area past the old Macy's store. Several squad cars and city trucks pulled up and woke everyone up. I was sleeping on the sidewalk and I was not blocking anyone from walking past. The police told everyone that we could not stay there and that we had to move. One officer told me directly that I could not stay there anymore. I left at that time and did not go back to that area.
4. For the past three months, I have been sleeping almost every night on the sidewalk on SW 2<sup>nd</sup> Street, east of SW 2<sup>nd</sup> Avenue near the Metro-mover garage.
5. At that location at night, I put my blankets on the sidewalk against the fence so

that I do not block anyone from walking on the sidewalk.

6. There are about nine to ten other people who sleep where I do me and there are several other groups who are on SW 2<sup>nd</sup> Street, west from where I sleep.

7. On the first or second Saturday in April 2018, in the mid-afternoon, the police pulled up to my location in two cars and told everyone that we had to leave. They then called city workers and fifteen minutes later, the workers arrived with a pickup truck and started to throw away the possessions of everyone who was not there. They took bags and suitcases and threw them into the back of the pickup truck. The police told us to take what was ours and leave everything else behind. I saw the workers take the items belonging to my friend, Carl Winston. I felt bad that I could not stop what they were doing and get Carl's things back. When he returned a short time later, I told him what had happened. Carl was greatly upset and told me that they took everything he had.

8. I have seen the police and city workers do pressure cleanings of the sidewalk farther down on SW 2<sup>nd</sup> Street, west, past SW 2<sup>nd</sup> Avenue. They have never done pressure cleanings on SW 2<sup>nd</sup> Street, east of 2<sup>nd</sup> Avenue, where I stay or where the other groups of homeless people sleep on SW 2<sup>nd</sup> Street.

9. One morning late last year in 2017, when I was staying on SW 1<sup>st</sup> Street, I went to get a cup of coffee at a Dunkin Doughnuts on Flagler Street. When I returned, all my things were gone. I saw the police and a city pick up truck past 2<sup>nd</sup> Avenue taking people's things from the street. I went up to the police and tried to get my things back. The officer told me that another crew had taken my things but I didn't see any other crews in the area. As a result, I lost all of my personal items, including a suitcase, backpack, clothes, shoes, blankets, hygiene items, and board games.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on 4 30 - 18

Robert Lane Lane  
Robert Lane

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 88-2406-CIV-MORENO**

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

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**DECLARATION OF DAVID V. PEERY**

1. My name is David V. Peery. I am over the age of 18.
2. I am a class representative in the above-captioned litigation. I've served in this capacity since November of 2013, and I participated in the December 2013 mediation that resulted in modifications to the Pottinger Consent Decree.
3. As a class representative, I periodically distribute "Pottinger Rights Flyers" to persons who are sleeping on the streets of the City of Miami ("the City"). Since 2012, I've worked with the Camillus House homeless shelter and the Camillus Health Concern community clinic to
  - conduct outreach,
  - inform persons without homes of available homelessness assistance programs and resources, and
  - obtain funding for peer support and case management programs targeting persons who are homeless and suffer from substance abuse disorder and severe mental illness.



4. Because of my longstanding homeless and Pottinger rights advocacy activities, as well as my own experience being homeless on the streets of Miami, many persons experiencing homelessness in Miami reach out to me and inform me of perceived violations of the Pottinger Settlement Agreement. I typically encounter and talk with individuals experiencing homelessness at the main branch of the Miami-Dade County Public Library in downtown Miami and on the streets of downtown Miami and the Overtown neighborhood .

5. As a result, I have periodically received from homeless individuals reports of Pottinger violations since the modified Pottinger Agreement went into effect in February of 2014.

6. In mid-March of 2018, I began to receive numerous troubling complaints from persons living on the streets of widespread Pottinger violations occurring throughout downtown Miami and in Overtown. I received these reports verbally from persons experiencing homelessness when I encountered them at the afore-mentioned public library and on the streets of downtown Miami and Overtown.

7. Particularly disturbing were many reports from individuals experiencing homelessness that City of Miami Police had ordered them and other persons who were homeless to move from the area bounded by NE 1<sup>st</sup> Avenue to the east, SW 3<sup>rd</sup> Street to the south, SE River Drive to the west and Flagler Street to the north (otherwise known as the "Lot 16 area"). These individuals also reported that police and City employees known as "Greenshirts" had also destroyed their property or that of others, and instructed them not to return to the area.

8. After hearing these reports, I visited the Lot 16 area at 8 am on the morning of March 27, 2018. Lot 16 is the primary area where the homeless reside within downtown Miami. I am very familiar with this area, and up until mid-March I typically observed 40 to 60

persons sleeping or sitting on the streets. On that morning there was virtually no one there who appeared to be homeless.

9. Also on that morning, I observed a white pickup truck, with a City of Miami logo on the side, driving away with what appeared to be black garbage bags stuffed with various items.

10. I've subsequently returned to the Lot 16 area on several occasions since March 27, 2018 and, as of the date of my execution of this Declaration, the Lot 16 area remains virtually cleared of all homeless individuals.

11. I also received verbal reports from persons sleeping under the awning of Macy's Department Store, on SW 1st Street between NE 1<sup>st</sup> Avenue and Miami Avenue, that police had similarly ordered everyone who was homeless to move from that area.

12. In the subsequent days, I continued to receive reports of, and I personally observed, numerous Pottinger violations:

- (a) On March 29, 2018, I visited the Overtown neighborhood to see if police were conducting a similar operation against persons sleeping on the streets of that neighborhood. On my visit, several persons who live on Overtown streets verbally informed me that, earlier in the day, police had conducted a sweep of homeless individuals who resided under the I-395 bridges at NW 1st Court and NW 2<sup>nd</sup> Avenue. Several persons who are homeless verbally informed me that police ordered about two dozen persons to move and threatened to arrest everyone who sleeps in that area after Thursday, March 29th. These persons also verbally informed me that police did not offer anyone shelter coupled with the "move on" orders on that day.

(b) On Saturday, April 8 at about 2:50 pm, I personally observed an Officer Charles (whose first name I do not know) driving a Miami City Police SUV with lights flashing and with "Homeless Outreach" inscribed on the side, pull up next to a van parked at SW 2nd St between SW 1st Place and 2<sup>nd</sup> Avenue. The van was operated by a charity worker who had regularly served meals at that location to the homeless every Saturday afternoon at 3 pm for more than 15 years. Officer Charles drove up to the group in an aggressive manner, and sitting in his vehicle loudly told the group they could not serve meals there and ordered them to move away from the area. I attempted to ask him why he was ordering the charity to move but he refused to talk to me. After the charity van drove away, the officer circled the block and parked on SW 2nd St with lights flashing.

(c) On April 12, 2018, an individual who works at a Coconut Grove restaurant verbally told me that, at approximately midnight on April 10-11, 2018, City of Miami police officers approached six homeless men who were sleeping in Peacock Park in the Coconut Grove neighborhood, ordered them to leave, and then destroyed their property.

13. I personally observed an incident of property destruction on Tuesday, April 17, 2018, in Overtown. At 9:45 am, on that day, I personally observed City of Miami NET employees announce that they were cleaning the street at NW 1<sup>st</sup> Court between NW 13<sup>th</sup> and 14<sup>th</sup> Streets, and order everyone to move their property. When one NET employee encountered several items neatly stacked on the sidewalk away from the street, which were obviously the property of persons who are homeless, the NET employee loudly shouted "Okay, now we're going to throw your shit away!" The employee then started to

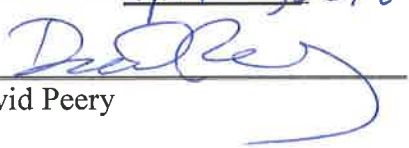
pile all the unattended belongings up into a pile, sometimes throwing and kicking persons' possessions onto the pile.

14. I then observed a woman, dressed in white, crying and screaming that the NET employee was throwing away her things. The NET employee allowed her to take one item, either a purse or shoes.

15. I observed another man then try to retrieve some items that he claimed were his from the pile. I observed the NET employee refuse to allow the individual to collect anything from the pile. I then heard shouting, saw cardboard and blankets flying. I then personally observed the NET employee, who was a much larger man than the homeless individual, stand over the pile of property with his fist balled up and threaten the individual who tried to retrieve items from the pile. At that point a NET supervisor, Ms. Howard and two police officers interceded. Ms. Howard then waved for a garbage truck to park at the curb in front of the pile. I next observed NET employees throwing away the property of at least a dozen individuals into the garbage truck.

16. I was able to take photos and video clips of the above-described April 17, 2018 incident.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on April 20, 2018  
  
\_\_\_\_\_  
David Peery

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

DECLARATION OF ROBERT RHOADS

RHOADS

1. My name is Robert Rhoads. I am over the age of 18.
2. I have been homeless and living on the streets of the City of Miami since July of 2017.
3. From August 2017 to March 23, 2018, I slept on the south side of the sidewalk on SW 2nd Street, between SW 2nd Avenue and the Wharf, a bar which is located at the end of SW 2<sup>nd</sup> Street on the river at NW North River Drive. During that time when I stayed and slept there, I took less than half of the sidewalk space and there was room for people to walk by. I never stayed, stood, or slept in such a way that I obstructed the sidewalk.
4. Before the police actions began in February 2017, there was a group of at least twenty people in the area who slept on the sidewalk.
5. I, like many people, slept on blankets and pillows which I laid out on the sidewalk. I kept my clothes and personal items in a suitcase and a storage bag. During the day when I would go to work, get food, or run errands, I would neatly put my things off the sidewalk so that they would not be in the way of anyone walking by. Often, there were people who stayed

at the location while others were away, and because the people who stayed there knew each other, they would look after and keep an eye on each other's property.

6. On Tuesday, February 6, 2018, at 6:00 a.m., without notice, the Miami police drove up in squad cars to where I and the others were sleeping and shined spotlights on us and then hit the warning/buzzer sounds on their cars, repeatedly. This was frightening and intimidating. The police ordered us by loudspeakers to "get up" immediately and told us that we had to move. They told us that they were going to clean the sidewalks and that we could not stay at that location. They did not offer us shelter. I, along with others, gathered up my possessions and moved around the block. For those people who were not there and not able to safeguard their possessions, the police took their things and threw them away. We stayed a block away while the police cleaned the sidewalks by power-washing them with spray hoses. At 1:00 p.m., after the sidewalks dried out, we returned to the location on SW 2<sup>nd</sup> Street.

7. On Thursday, February 8, 2018, at 6:00 a.m., the police returned, without notice, and did the same thing as on Tuesday, February 6, just two days before: they drove up in squad cars, shined lights on us, sounded warning buzzers, and ordered us to move. Again, they told us they were going to clean the streets and sidewalks. We were forced to leave hurriedly, and any possessions that were left behind were thrown away by the police. We moved a block or so away. The streets and sidewalks were power cleaned and later that day we returned to the area on SW 2<sup>nd</sup> Street.

8. For the next several weeks, every Tuesday and Thursday at 6:00 a.m., the police repeated the same action: they drove up in squad cars, shined lights on us, sounded warning buzzers, and ordered us to move.

9. I made a note of the dates and times and a brief description of what occurred, each

time it happened on a draft of a Google email in my phone. The Miami police conducted these actions at 6:00 a.m. on the following dates: February 6, February 8, February 13, February 15, February 20, February 22, February 27, March 1, March 6, March 8, March 13, March 20 and March 22.

10. On one occasion when the police came and woke us up and forced us to leave, a person who slept on the sidewalk near me, Ellis Haynes, who is known as "Red," was away from his spot when the police were rushing us to pack our things and leave. I grabbed his bag and some of his belongings because each time the police did this action, they would take and throw away the personal items of people who were not there. A police officer told me I could not take Red's things and ordered me to put them down. I told the police officer they belonged to "Red," a person I knew and that he would be back. The officer told me that "Red is in jail." I knew that was not true and I took his things and hurried off. Later that day I gave Red his possessions.

11. The continued and ongoing police actions which happened twice a week began to take a toll on the group of people who were sleeping on the sidewalk on SW 2<sup>nd</sup> Street. Several of the people who slept there were working nearby and when the police came to force us up and away from the area, they were not there to get their property. Many of them lost their clothes, blankets and food. This was particularly difficult because it was winter and cold at night.

12. On the night of Thursday, March, 22, I did not sleep at the SW 2<sup>nd</sup> Street location; I slept at another location nearby. The following morning on Friday, March 23, at approximately 7:45 a.m., I returned to the SW 2<sup>nd</sup> Street location and discovered that my suitcase and bag with all of my personal possessions were missing. Ellis Haynes told me that the police with city workers had just been there twenty minutes before, that the police quickly approached and hurried the homeless people there away, and that the city workers threw away whatever

possessions were left behind, including mine.

13. I have moved and have not stayed at the SW 2<sup>nd</sup> Street location since March 23, 2018.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on

4/13/18

  
Robert Rhoads

RHODES  




UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

---

**DECLARATION OF WILLIE RICHARDSON**

1. My name is Willie Richardson. I am over the age of 18.
2. I am currently homeless and live in the City of Miami.
3. For about the year and a half, I have been sleeping almost every night on the sidewalk at SW 3rd Street, between SW 2nd Avenue and NW North River Drive. There are no other people who sleep there and I am usually alone. I have been at that location long enough so that the police in the area know that I stay there.
4. At that location, one morning several months ago at approximately 6:00 a.m., a City of Miami police officer drove up to me while I was on the sidewalk and told me I had to move and that I could not stay there. The officer did not offer me shelter. I was not blocking the sidewalk and there was more than enough room for someone to pass. I returned later that day and have continued to sleep there.
5. On the street just north of me, at SW 2<sup>nd</sup> Street between SW 2nd Avenue and NW North River Drive, there used to be a large group of homeless people who slept on the sidewalk.
6. In early March of this year, the City of Miami police began a routine where

several times a week at approximately 6:00 a.m., a couple of police cars would pull up to the group of homeless people on SW 2<sup>nd</sup> Street, and the officers would shine bright lights on the people who were sleeping and hit their loud warning buzzer several times. This would wake everyone up and the police would then tell the people that they had to move. I could hear and see this from where I was staying.

7. During that same time in March, the Miami police would also go to that same location a couple times a week at around 7:30 a.m., well after many people who had slept there had left to get food or go to work. The police would drive up and tell people they had to move and that they could not stay there. In response, people would take their things and leave. City workers would then take the personal possessions of people who were not there and throw them into the back of a pick-up truck. On one occasion I saw the police treat an older man harshly because they believed he was not moving fast enough in picking up his things and moving. In response, the police threw some of his possessions onto the pile in the truck and the older man was not able to get those things back.

8. As a result of the police actions, many, if not all of the people who used to sleep on SW 2<sup>nd</sup> Street, have left.

9. On March 29, 2018, I slept in my usual spot on SW 3<sup>rd</sup> Street, between SW 2<sup>nd</sup> Avenue and SW River Drive. That next morning, Friday, March 30, per my routine, I got up at approximately 6:00 a.m. and went to the Government Center. When I left, I left my clothes, shoes, and other personal items in a bag which was off the sidewalk and against the fence. When I returned later in the day, my bag was missing. I later learned that the police had done another sweep in the area with the pick-up truck and had taken the possessions of homeless people.

I declare under penalty of perjury that the foregoing is true and correct. I understand that

a false statement in this Declaration will subject me to penalties for perjury.

Executed on April 13, 2018

Willie Richardson  
Willie Richardson

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

---

**DECLARATION OF MALIK SALUKI**

1. My name is Malik Saluki. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami for the past three years.
3. Since early March of this year, I have had my personal property taken by the City of Miami on two separate occasions.
4. The first incident occurred in early March when I was staying and sleeping on the sidewalk at SW 2<sup>nd</sup> Street and North River Drive near the Wharf.
5. Early that morning I went to Miami Dade Government Center. When I returned to my spot on SW 2<sup>nd</sup> Street at approximately 9:30 a.m., I found City of Miami workers in green shirts putting homeless people's things in the back of a truck, preparing to throw them away. I hurried up to them and saw my bags and my property in the back of the truck. I tried to get them back but the workers would not let me retrieve my property.
6. I then went up to a police officer and asked for help in getting my things back but the officer told me that it was out of his hands, because once the property is put on the truck,

there was nothing that could be done.

7. The police also told us that we had to leave and that we could not stay there anymore.

8. As a result, I lost all of my property which included my clothes, shoes, identification, social security card and a phone.

9. I lost my property a second time on the morning of April 17, 2018.

10. After the incident on SW 2<sup>nd</sup> Street, I relocated to NW 13<sup>th</sup> Street and 1<sup>st</sup> Court on the west side of 1<sup>st</sup> Court, under the overpass. I kept my property in black plastic bags which were neatly arranged and bundled against the fence next to the sidewalk. The bags were put in a place where they were not blocking the sidewalk.

11. On April 17, I got up and went to the Burger King a few blocks away to get something to eat. I returned around 9:30 a.m. and found city workers in green shirts taking people's property and throwing it away. All of my property was gone.

12. I hurried up to the city workers in green shirts and asked them where my property was and they told me that since my property was left unattended, it was abandoned and was going to be thrown away. I actually saw my things in my bags on the truck and told them that that was my property. I pleaded with them to allow me to get my property back. The workers would not allow me to get my property back. As a result, I lost everything again, including clothes, shoes and identification which I had just recently replaced from the incident in March.

13. None of the workers ever offered me shelter.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a

false statement in this Declaration will subject me to penalties for perjury.

Executed on 5/14/18.  
  
Malik Saluki

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

DECLARATION OF ASHLEY SELF

1. My name is Ashley Self. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami since November of 2017. I have a disability that makes it difficult for me to walk. I'm on social security/disability. I'm originally from Ohio.
3. Up until recently, I would sleep and store my things on the sidewalk behind Macy's in downtown Miami. Several other homeless people would do the same thing. All of us had belongings with us. I was actually working with Macy's at one point, helping them clean the area outside the store.
4. Starting in about February of this year, the police have started harassing the homeless people in downtown Miami. One day recently, I had my stuff stored neatly on the sidewalk, packed up against the wall. It was not blocking the sidewalk, and there was plenty of room for people to walk by. I left to go use the bathroom. When I came back 10 minutes later, all of my stuff was gone. I lost everything I owned except the clothes I was wearing. That included a suitcase, clothes, my social security card, birth certificate, family pictures that I can't

replace, and food. I saw a white pickup truck down with a City of Miami logo on it down the street. I went after it and begged them to give me my stuff back. They refused.

5. This has been devastating. It's very difficult to get another birth certificate from Ohio. I've been trying really hard to get back on my feet, but losing my documents has made it impossible. I think my identity may have been stolen, and it's impossible for me to fix that. It's also given me problems with my social security/disability payments.

6. I've never been offered shelter since I've been living on the streets. One day, less than a month ago, I saw a "Green Shirt." I told him I wanted to go to a shelter. He told me that there was no shelter available and that they were having difficulty placing people. I would have accepted shelter if it had been offered.

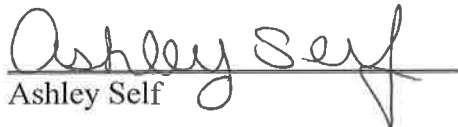
7. On about April 16, 2018, a group was giving out food by the Wharf on 2<sup>nd</sup> street. I went there to get food and saw two trucks that belonged to the group. Police officers arrived with their lights on. They got out and told the organizers that they had to leave, and that they were not going to give another warning. The police eventually arrested two people who were giving out food.

8. I've talked to numerous people on the streets recently, and nearly everyone had had this happen to them: the police have been telling them to move and have been taking their things.

9. I have since moved to a different location in Miami.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on 4-20-18.

  
Ashley Self



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 88-2406-CIV-MORENO**

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

**DECLARATION OF JEFFREY STANLEY**

1. My name is Jeffrey Stanley. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami for the past three months.
3. Since February, I have been sleeping almost every night on the sidewalk under the overpass at NW 1<sup>st</sup> Court and NW 13<sup>th</sup> Street.
4. At that location at night, I put my blankets on the sidewalk against the fence so that I do not block anyone from walking on the sidewalk. During the day I keep my personal items in some bags and my other things, such as blankets and clothes, neatly bundled so that they do not obstruct the sidewalk.
5. On April 8, 2018, I got up very early to make an appointment at Jackson Memorial Hospital for an out-patient surgical procedure to remove a cyst under my armpit. I also suffer from a bladder disorder. When I left for the hospital I asked some of the other men who I had gotten to know who sleep near me to watch out after my things while I was gone. I checked in at the hospital at 7:42 a.m. I know that to be the time because I have the papers from

the hospital. After the procedure on the advice of the medical professionals, I went to Camillus House to find out if they had a "medical bed" available for me to rest and recover after the surgery. Camillus House did not have a bed for me so I continued back to the location where I sleep at NW 1<sup>st</sup> Court and NW 13<sup>th</sup> Street.

6. When I returned to my spot that afternoon, all my property was gone. I was told by Malik Saluki that after I had left early that morning, the Miami police and city workers had come and cleared the street and sidewalk and that if anyone's property was left unattended, it was thrown away. He also told me that the police and city workers would not let anyone take or safeguard other people's property.

7. I lost all my property including my clothes, shoes, phone, medication and the "Depends" I use for my bladder disorder. The loss of my property was traumatic and made my recovery from my medical procedure very difficult.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on

5/14/18

  
Jeffrey Stanley

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

DECLARATION OF RAFAEL VILLALONGA

1. My name is Rafael Villalonga. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami for the past 5 years.
3. During March of this year, 2018, I had been sleeping almost every night on the sidewalk on SW 2<sup>nd</sup> Avenue between SW 1<sup>st</sup> Street and SW 2<sup>nd</sup> Street on the west side of the street near a "No Parking" sign and against the fence. I would lay down a piece of cardboard and when it was cold I would use a blanket. I always have with me only a standard size backpack which at night I use as a pillow. I would sleep or sit against the fence and always made sure that I was not blocking the sidewalk.
4. One evening in mid-March at 9:30 – 10:00 p.m., I was sitting on the sitting sidewalk, alone, eating when a Miami police squad car pulled up next to me and rolled the officer his window down. The officer told me that "You can't stay here, you have to leave now!" I was not blocking the sidewalk and there was plenty of room for people to pass. The office did not offer me shelter.

5. I complied, gathered my things, and walked away.

6. I slept at that location for about six months because church groups would feed the homeless nearby around the corner on SW 2<sup>nd</sup> Street.

7. One evening a couple weeks later in late March 2018, at SW 2<sup>nd</sup> Avenue and 2<sup>nd</sup> Street, one of the church groups who gives out food was feeding the homeless. I went and got some food and while I was sitting down eating, I saw and heard a Miami police officer go up to the people from the church and tell them they could not serve food there anymore.

8. During the time I slept on SW 2<sup>nd</sup> Avenue, on a few occasions, I saw the police early in morning at approximately 6:00 a.m. drive up, shine their lights on the homeless people sleeping on the streets, hit the buzzer warning sound on their cars, and tell people they had to leave. I knew this practice was occurring but I saw it happen only a few times because my daily routine is to be up at 4:30 -- 5:00 a.m., off the street and off to start my day.

9. Because of the police actions, I no longer stay at the location on SW 2<sup>nd</sup> Avenue.

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on 4-13-2018

  
\_\_\_\_\_  
Rafael Villalonga

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER, BERRY YOUNG, DAVID  
PEERY, AND CAROLE PATMAN,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

---

**DECLARATION OF CARL D. WINSTON**

1. My name is Carl Winston. I am over the age of 18.
2. I am currently homeless and have lived on the streets of the City of Miami for many years.
3. For the past five years, I have been sleeping almost every night on the sidewalk on SW 2<sup>nd</sup> Street, east of SW 2<sup>nd</sup> Avenue near the Metro-mover repair facility.
4. At that location at night, I put my bag and my blanket on the sidewalk against the fence so that I do not block anyone from walking on the sidewalk. I position myself when I sleep so that I am not in anyone's way. There are a few other people who sleep near me and there are others who are on SW 2<sup>nd</sup> Street further west from where I sleep.
5. I usually lay my blanket down at around 9 pm and sleep until approximately 5:30-6 am. During the day I do not stay at the location where I sleep. On Monday through Friday, when I get up I usually go the Wynwood area where I load and unload trucks to make some money. On days when I cannot find work, I go to the library and the mission on NW 20<sup>th</sup> Street where I take a shower and get food. Most times when I leave for the day I put my bag of

personal items underneath a part of the sidewalk so that they cannot be seen and do not block anyone. When I do leave briefly and leave my things out, I always tell the people who I know who are there to keep an eye on my things and that I will be back shortly. I never leave them in a place where they are obstructing anyone.

6. On the first or second Saturday in April 2018, at approximately 2:30 in the afternoon, I went to the mission on NW 20 street to take a shower. When I left, my things were neatly placed against the fence and there were others who were there watching over them.

7. When I returned 90 minutes later my things were gone. I was told by "Pops," an older man named Robert, that the police had been there with the city workers and that they took my things and threw them away.

8. On that day I lost my bag, blankets, clothes, shoes, personal hygiene items, photos, a phone, and most importantly, my birth certificate.

9. I have had to replace all my things and start over. I have not been able yet to get my birth certificate replaced.


10. At the same location, approximately one month before on a weekday morning at 10 am, I went to the Seven Eleven Store a few blocks away to get something to drink. When I returned, the police and city workers were there taking my things from the sidewalk and was about to throw them into a truck. I rushed up to them and pleaded them to give them back to me, and told them that those were my things. The workers gave my things back to me. However, they continued to take the property of everyone in the area who was not there to protect their things.

11. For the past few months the police have been driving up to where we stay and telling us that we have to leave and that we can't stay there. When they do this they never tell us

that there are shelters to go to. On other occasions, I have seen other people ask the police if there are shelter beds and the police say there are no beds. When the police tell us to move, I do what they say and relocate for the night.

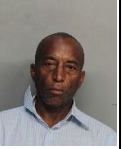
I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this Declaration will subject me to penalties for perjury.

Executed on 4-30-18.

  
\_\_\_\_\_  
Carl Winston



1100303200

OBTS NUMBER 1314036582		ARMED FORCES NO		BWC YES		<b>COMPLAINT/ARREST AFFIDAVIT</b>				POLICE CASE NO. 1803270023634					
SPECIAL OPERATION:		<input type="checkbox"/> FELONY <input type="checkbox"/> WARRANT		<input checked="" type="checkbox"/> MISD		<input type="checkbox"/> TRAFFIC		<input type="checkbox"/> JUV <input type="checkbox"/> DV		<input type="checkbox"/> MOVES <input type="checkbox"/> CIV INF		JAIL NO. 180133561		PMHD UNK	COURT CASE NO. M18008595
IDS NO. 2616791		AGENCY CODE 001		MUNICIPAL P.D. DEF. ID NO.		MDPD RECORDS AND ID NO. 0540184		STUDENT ID NO.		GANG RELATED NO		FRAUD RELATED NO			
DEFENDANT'S NAME (LAST, FIRST, MIDDLE) ARCHER, CHETWYN EVERARD								ALIAS and / or STREET NAME				SIGNAL:			
DOB (MM/DD/YYYY) 04/03/1960		AGE 56	RACE B	SEX M	HISPANIC: NO ETHNICITY: AFR	HEIGHT 5'06	WEIGHT 150	HAIR COLOR BLK	HAIR LENGTH SHT	HAIR STYLE AFR	EYES BRO	GLASSES NO	FACIAL HAIR UNS	TEETH NOR	
SCARS, TATTOOS, UNIQUE PHYSICAL FEATURES (Location, Type, Description) TATTOO: NONSPECIFIC HEAD, ARROW												PLACE OF BIRTH (City, State/Country) BRONKS NY US			
LOCAL ADDRESS										PHONE		CITIZENSHIP US			
PERMANENT ADDRESS (Street, Apt. Number) 407 NW 59TH TER										(City) MIAMI		(State) (Country) (Zip) FL US 33127		OCCUPATION CARPENTER	
SCHOOL OR BUSINESS ADDRESS (Street, Apt. Number)										(City) (State) (Country) (Zip)		ADDRESS SOURCE DL			
DRIVER'S LICENSE NUMBER/STATE FL-A626105601230				SOCIAL SECURITY NO. XXX-XX-XXXX		WEAPON SEIZED NO		Defendant/CONCEALED WEAPON PERMIT NONE		INDICATION OF: Alcohol Intoxication: N Drug Intoxication: U					
ARREST DATE 03/27/2018		ARREST TIME 08:48		ARREST LOCATION NW 2ND AVE & NW 14TH TER MIAMI, FL 33136										GRID 1169	
CO-DEFENDANT NAME								DOB		<input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE		<input type="checkbox"/> FELONY <input type="checkbox"/> DV		<input type="checkbox"/> JUVENILE <input type="checkbox"/> MISDEMEANOR	
CO-DEFENDANT NAME								DOB		<input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE		<input type="checkbox"/> FELONY <input type="checkbox"/> DV		<input type="checkbox"/> JUVENILE <input type="checkbox"/> MISDEMEANOR	
CO-DEFENDANT NAME								DOB		<input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE		<input type="checkbox"/> FELONY <input type="checkbox"/> DV		<input type="checkbox"/> JUVENILE <input type="checkbox"/> MISDEMEANOR	
JUV only	Relation Name Street Zip Phone Contacted?														
CHARGES				CHARGE AS:	CNTS	FL STATUTE NUMBER	VIOL OF SECT.	CODE OF	UCR	DV	WARRANT TYPE OR TRAFFIC CITATION				
1. L/O-OBSTRUCTION OF FREE PASSAGE/SIDEWALK/MIAMI				ORD	1		54-2(C)	001	95000060	N					
2.															
3.															
4.															
The undersigned certifies and swears that he/she has just and reasonable grounds to believe, and does believe that the above named Defendant committed the following violation of law: On the 27 day of MARCH, 2018, at 08:45 at NW 2ND AVE & NW 14TH TER MIAMI, FL 33136 I OBSERVED THE DEFENDANT AT THE LOCATION SLEEPING ON A MATTRESS ON THE SIDEWALK. THE MATTRESS THE DEFENANT WAS SLEEPING ON WAS BLOCKING THE ENTIRE SIDEWALK PREVENTING PEDESTRIANS TO USE THE SIDEWALK. THE DEFENDANT HAS BEEN GIVEN SEVERAL WARNINGS IN REGARD TO BLOCKING THE SIDEWALK AND HAS BEEN OFFERED SHELTER. HOWEVER, THE DEFENDANT DECLINED SHELTER AND AGREED THAT HE WOULD NOT BLOCK THE SIDEWALK AGAIN.  DEFENDANT ARRESTED AND TRANSPORTED TO... [Continued on Next Page]															
HOLD FOR OTHER AGENCY VERIFIED BY				<input type="checkbox"/> HOLD FOR BOND HEARING. DO NOT BOND OUT (Officer Must Appear at Bond Hearing).				<input type="checkbox"/> I Understand that should I willfully fail to appear before the court as required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be issued. Furthermore, I agree that notice concerning the time, date and place of all court hearings should be sent to the above address. I agree that it is my responsibility to notify Clerk of the Court (Juveniles notify Juvenile Division) anytime that my address changes. <input type="checkbox"/> You need not appear in court, but must comply with the instructions on the reverse side hereof.							
I SWEAR THAT THE ABOVE STATEMENT IS TRUE AND CORRECT.  GONZALEZ, H: Court ID: 001-41285 MPD				SWORN TO AND SUBSCRIBED BEFORE ME, THE UNDERSIGNED AUTHORITY THIS 27 DAY OF MARCH, 2018  Sgt. [Signature] 40904  WILSON, J: Court ID: 001-40904 MPD											

COMPLAINT/ARREST AFFIDAVIT - COURT COPY





1100303200

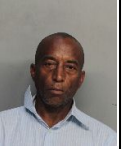
OBTS NUMBER 1314036582		<b>COMPLAINT/ARREST AFFIDAVIT CONTINUATION</b>				POLICE CASE NO. 1803270023634						
JAIL NO. 180133561				COURT CASE NO. M18008595								
SPECIAL OPERATION:		<input type="checkbox"/> FELONY <input type="checkbox"/> WARRANT		<input checked="" type="checkbox"/> MISD <input type="checkbox"/> TRAFFIC FUGITIVE WARRANT:		<input type="checkbox"/> JUV <input type="checkbox"/> DV <input type="checkbox"/> MOVES <input type="checkbox"/> In State		<input type="checkbox"/> CIV INF <input type="checkbox"/> Out State		JAIL NO. 180133561	PMHD UNK	COURT CASE NO. M18008595
DEFENDANT'S NAME (LAST, FIRST, MIDDLE) ARCHER, CHETWYN EVERARD										DOB (MM/DD/YYYY) 04/03/1960		
CO-DEFENDANT NAME				DOB		<input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE		<input type="checkbox"/> FELONY <input type="checkbox"/> DV		<input type="checkbox"/> JUVENILE <input type="checkbox"/> MISDEMEANOR		
CO-DEFENDANT NAME				DOB		<input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE		<input type="checkbox"/> FELONY <input type="checkbox"/> DV		<input type="checkbox"/> JUVENILE <input type="checkbox"/> MISDEMEANOR		
CHARGES			CHARGE AS:	CNTS	FL STATUTE NUMBER	VIOL OF SECT.	CODE OF	UCR	DV	WARRANT TYPE OR TRAFFIC CITATION		
5.												
6.												
7.												
8.												
TGK WITHOUT FURTHER INCIDENT.  OFFICERS USING BODY-WORN CAMERA: GONZALEZ, C: Court ID: 001-41229 GONZALEZ, H: Court ID: 001-41285												

COMPLAINT/ARREST AFFIDAVIT CONT.

HOLD FOR OTHER AGENCY VERIFIED BY		<input type="checkbox"/> HOLD FOR BOND HEARING. DO NOT BOND OUT (Officer Must Appear at Bond Hearing).		<input type="checkbox"/> I Understand that should I willfully fail to appear before the court as required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be issued. Furthermore, I agree that notice concerning the time, date and place of all court hearings should be sent to the above address. I agree that it is my responsibility to notify Clerk of the Court (Juveniles notify Juvenile Division) anytime that my address changes.	
I SWEAR THAT THE ABOVE STATEMENT IS TRUE AND CORRECT.  		SWORN TO AND SUBSCRIBED BEFORE ME, THE UNDERSIGNED AUTHORITY THIS 27 DAY OF MARCH, 2018  		<input type="checkbox"/> You need not appear in court, but must comply with the instructions on the reverse side hereof.	
GONZALEZ, H: Court ID: 001-41285		WILSON, J: Court ID: 001-40904			



1100303200

OBTS NUMBER 1314036582		ARMED FORCES NO		BWC YES		<b>COMPLAINT/ARREST AFFIDAVIT</b>				POLICE CASE NO. 1803270023641					
SPECIAL OPERATION:		<input type="checkbox"/> FELONY <input type="checkbox"/> WARRANT		<input checked="" type="checkbox"/> MISD		<input type="checkbox"/> TRAFFIC		<input type="checkbox"/> JUV <input type="checkbox"/> DV		<input type="checkbox"/> MOVES <input type="checkbox"/> CIV INF		JAIL NO. 180133561		PMHD UNK	COURT CASE NO. M18008594
IDS NO. 2616791		AGENCY CODE 001		MUNICIPAL P.D. DEF. ID NO.		MDPD RECORDS AND ID NO. 0540184		STUDENT ID NO.		GANG RELATED NO		FRAUD RELATED NO			
DEFENDANT'S NAME (LAST, FIRST, MIDDLE) ARCHER, CHETWYN EVERARD								ALIAS and / or STREET NAME				SIGNAL:			
DOB (MM/DD/YYYY) 04/03/1960		AGE 56	RACE B	SEX M	HISPANIC: NO ETHNICITY: AFR	HEIGHT 5'06	WEIGHT 150	HAIR COLOR BLK	HAIR LENGTH SHT	HAIR STYLE AFR	EYES BRO	GLASSES NO	FACIAL HAIR UNS	TEETH NOR	
SCARS, TATTOOS, UNIQUE PHYSICAL FEATURES (Location, Type, Description) TATTOO: NONSPECIFIC HEAD, ARROW												PLACE OF BIRTH (City, State/Country) BRONKS NY US			
LOCAL ADDRESS										PHONE		CITIZENSHIP US			
PERMANENT ADDRESS (Street, Apt. Number) HOMELESS										(City) MIAMI		(State) (Country) (Zip) FL US		OCCUPATION CARPENTER	
SCHOOL OR BUSINESS ADDRESS (Street, Apt. Number)										(City)		(State) (Country) (Zip)		ADDRESS SOURCE DL	
DRIVER'S LICENSE NUMBER/STATE FL-A626105601230				SOCIAL SECURITY NO. XXX-XX-XXXX		WEAPON SEIZED NO		Defendant/CONCEALED WEAPON PERMIT NONE		INDICATION OF: Alcohol Inference: N Drug Inference: U					
ARREST DATE 03/27/2018		ARREST TIME 08:48		ARREST LOCATION NW 2ND AVE & NW 14TH TER MIAMI, FL 33136										GRID 1169	
CO-DEFENDANT NAME								DOB		<input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE		<input type="checkbox"/> FELONY <input type="checkbox"/> DV		<input type="checkbox"/> JUVENILE <input type="checkbox"/> MISDEMEANOR	
CO-DEFENDANT NAME								DOB		<input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE		<input type="checkbox"/> FELONY <input type="checkbox"/> DV		<input type="checkbox"/> JUVENILE <input type="checkbox"/> MISDEMEANOR	
CO-DEFENDANT NAME								DOB		<input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE		<input type="checkbox"/> FELONY <input type="checkbox"/> DV		<input type="checkbox"/> JUVENILE <input type="checkbox"/> MISDEMEANOR	
JUV only	Relation		Name		Street				Zip		Phone		Contacted?		
CHARGES				CHARGE AS:	CNTS	FL STATUTE NUMBER		VIOL OF SECT.		CODE OF	UCR	DV	WARRANT TYPE OR TRAFFIC CITATION		
1. M/1-DRUG PARAPHERNALIA/POSSESSION W/INTENT TO USE				F.S.	1	893.147(1)					0011350B	N			
2.															
3.															
4.															
The undersigned certifies and swears that he/she has just and reasonable grounds to believe, and does believe that the above named Defendant committed the following violation of law: On the 27 day of MARCH, 2018, at 08:45 at NW 2ND AVE & NW 14TH TER MIAMI, FL, 33136 THE DEFENDANT WAS ARRESTED REFERENCE CITY OF MIAMI POLICE CASE NUMBER 180327-0023634. A SEARCH INCIDENT TO ARREST OF THE DEFENDANT'S BELONGINGS BY OFC. C. GONZALEZ IBM 41229 REVEALED A CLEAR, CYLINDER GLASS PIPE WITH A BURNT TIP CONTAINING PIECES OF BRILLO PAD ON ONE END, CONSISTENT WITH THE USE OF CRACK COCAINE. I SHOWED THE DEFENDANT THE ALLEGED CRACK PIPE AND HE IMMEDIATELY SAID THAT THE CRACK PIPE BELONGED TO HIM. DEFENDANT ARRESTED AND TRANSPORTED TO TKG WITHOUT FURTHER INCIDENT.  THE DRUG PARAPHERNALIA WAS TURNED IN TO THE... [Continued on Next Page]															
HOLD FOR OTHER AGENCY VERIFIED BY				<input type="checkbox"/> HOLD FOR BOND HEARING. DO NOT BOND OUT (Officer Must Appear at Bond Hearing).				<input type="checkbox"/> I Understand that should I willfully fail to appear before the court as required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be issued. Furthermore, I agree that notice concerning the time, date and place of all court hearings should be sent to the above address. I agree that it is my responsibility to notify Clerk of the Court (Juveniles notify Juvenile Division) anytime that my address changes. <input type="checkbox"/> You need not appear in court, but must comply with the instructions on the reverse side hereof.							
I SWEAR THAT THE ABOVE STATEMENT IS TRUE AND CORRECT.  GONZALEZ, H: Court ID: 001-41285 MPD				SWORN TO AND SUBSCRIBED BEFORE ME, THE UNDERSIGNED AUTHORITY THIS 27 DAY OF MARCH, 2018  Sgt. [Signature] 40904  WILSON, J: Court ID: 001-40904 MPD											

COMPLAINT/ARREST AFFIDAVIT - COURT COPY



1100303200

OBTS NUMBER 1314036582		<b>COMPLAINT/ARREST AFFIDAVIT CONTINUATION</b>			POLICE CASE NO. 1803270023641					
JAIL NO. 180133561				COURT CASE NO. M18008594						
SPECIAL OPERATION:		<input type="checkbox"/> FELONY <input type="checkbox"/> WARRANT		<input checked="" type="checkbox"/> MISD <input type="checkbox"/> TRAFFIC FUGITIVE WARRANT:	<input type="checkbox"/> JUV <input type="checkbox"/> DV <input type="checkbox"/> MOVES <input type="checkbox"/> In State	<input type="checkbox"/> CIV INF <input type="checkbox"/> Out State	JAIL NO. 180133561	PMHD UNK	COURT CASE NO. M18008594	
DEFENDANT'S NAME (LAST, FIRST, MIDDLE) ARCHER, CHETWYN EVERARD								DOB (MM/DD/YYYY) 04/03/1960		
CO-DEFENDANT NAME				DOB		<input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE		<input type="checkbox"/> FELONY <input type="checkbox"/> DV	<input type="checkbox"/> JUVENILE <input type="checkbox"/> MISDEMEANOR	
CO-DEFENDANT NAME				DOB		<input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE		<input type="checkbox"/> FELONY <input type="checkbox"/> DV	<input type="checkbox"/> JUVENILE <input type="checkbox"/> MISDEMEANOR	
CHARGES			CHARGE AS:	CNTS	FL STATUTE NUMBER	VIOL OF SECT.	CODE OF	UCR	DV	WARRANT TYPE OR TRAFFIC CITATION
5.										
6.										
7.										
8.										
PROPERTY DEPARTMENT AS EVIDENCE.  OFFICERS USING BODY-WORN CAMERA: GONZALEZ, C: Court ID: 001-41229 GONZALEZ, H: Court ID: 001-41285										

COMPLAINT/ARREST AFFIDAVIT CONT.

HOLD FOR OTHER AGENCY VERIFIED BY		<input type="checkbox"/> HOLD FOR BOND HEARING. DO NOT BOND OUT (Officer Must Appear at Bond Hearing).		<input type="checkbox"/> I Understand that should I willfully fail to appear before the court as required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be issued. Furthermore, I agree that notice concerning the time, date and place of all court hearings should be sent to the above address. I agree that it is my responsibility to notify Clerk of the Court (Juveniles notify Juvenile Division) anytime that my address changes.  <input type="checkbox"/> You need not appear in court, but must comply with the instructions on the reverse side hereof.	
I SWEAR THAT THE ABOVE STATEMENT IS TRUE AND CORRECT.  <div style="text-align: right; font-family: cursive;">H. Gonzalez 41285</div> GONZALEZ, H: Court ID: 001-41285		SWORN TO AND SUBSCRIBED BEFORE ME, THE UNDERSIGNED AUTHORITY THIS 27 DAY OF MARCH, 2018  <div style="text-align: right; font-family: cursive;">Sgt. [Signature] 40904</div> WILSON, J: Court ID: 001-40904			

### CASE INFORMATION

**Court Case No.:** M18008593 **State Case No.:** 132018MO0085930001XX

**Name:** BASS, TABITHA **Date of Birth:** 02/21/1980

**Date Filed:** 03/28/2018 **Date Closed:** 03/28/2018 **Warrant Type:**

**Hearing Date:** **Hearing Time:** **Hearing Type:**

**Court Room:** REGJB - JUSTICE BUILDING, ROOM No.: 4-10

**Address:** 1351 N.W. 12 ST

**Previous Case:** **Next Case:**

**Judge:** SERAPHIN, FRED **Defense Attorney:** PUBLIC DEFENDER APPOINTMENT, ASSIGN

**Bfile Section:** M003 **File Location:** FILE ROOM **Box Number:**

### CHARGES

Seq No.	Charge	Charge Type	Disposition
1	OBSTRUCT/FREE PASS	MUNICIPAL ORDINANCE	WH ADJ-SUSP ENT SENT

### ADDITIONAL INFORMATION

**Probation Start Date:** **Probation End Date:**

**Probation Length:** **Probation Type:**

**Defendant in Jail:** N **Defendant Release to:** CTS,

**Bond Amount:** \$0.00 **Bond Status:**

**Bond Type:** **Bond Issue Date:**

### DOCKETS:

Seq. No.	Date	Book/Page	Docket
11	03/30/2018		DEFN ZIP CODE CHANGED BY FINALIST PURSUANT TO CLERK
8	03/28/2018		AFFIDAVIT FOR INDIGENT STATUS - INDIGENT
2	03/28/2018		FIRST APPEARANCE/JAIL ARRAIGNMENT - A.M.
1	03/28/2018		CLOSING JUDGE FRANCIS, MARY JO



NUMBER		ARMED FORCES NO		BWC YES		<b>COMPLAINT/ARREST AFFIDAVIT</b>										POLICE CASE NO. 1803270023633													
AL ATION		<input type="checkbox"/> FELONY <input type="checkbox"/> WARRANT		<input checked="" type="checkbox"/> MISD <input type="checkbox"/> TRAFFIC		<input type="checkbox"/> JUV <input type="checkbox"/> DV		<input type="checkbox"/> CIVILES <input type="checkbox"/> CIV INT		<input type="checkbox"/> In State <input type="checkbox"/> Out State		SAIL NO. 180133560		PMHD UNK		COURT CASE NO. M18008593													
D.		AGENCY CODE 001		MUNICIPAL P.D. DEF. ID NO.		MDPD RECORDS AND ID NO.		STUDENT ID NO.																					
DEFENDANT'S NAME (LAST, FIRST, MIDDLE) S, TABITHA										ALIAS and / or STREET NAME																			
(MM/DD/YYYY) 21/1980		AGE 37		RACE W		SEX F		HISPANIC NO		ETHNICITY ANG		HEIGHT 5'02		WEIGHT 135		HAIR COLOR BLK		HAIR LENGTH MED		HAIR STYLE STR		EYES BLK		GLASSES NO		FACIAL HAIR CLN		TEETH DIR	
SCOLORATION: RIGHT WRIST, BUTTERFLIES										SIGNAL:																			
CAL ADDRESS										PLACE OF BIRTH (City, State/Country) FL US																			
PERMANENT ADDRESS (Street, Apt. Number) 45 NW 1ST CT # 14										PHONE (City) MIAMI																			
SCHOOL OR BUSINESS ADDRESS (Street, Apt. Number)										PHONE (State) (Country) (Zip) FL US 33136																			
DRIVER'S LICENSE NUMBER/STATE										CITIZENSHIP US																			
SOCIAL SECURITY NO. 066-70-9192										OCCUPATION																			
WEAPON SEIZED NO										ADDRESS SOURCE VERBAL																			
ARREST DATE 3/27/2018		ARREST TIME 08:49		ARREST LOCATION NW 2ND AVE & NW 14TH TER MIAMI, FL 33136																									
CO-DEFENDANT NAME										INDICATION OF: Alcohol Influence: U Drug Influence: U																			
CO-DEFENDANT NAME										Defendant/CONCEALED WEAPON NONE																			
CO-DEFENDANT NAME										GRID 1169																			
JUV only										IN CUSTODY AT LARGE																			
										FELONY DV																			
										JUVENILE MISDEMEANOR																			
										IN CUSTODY AT LARGE																			
										FELONY DV																			
										JUVENILE MISDEMEANOR																			
										IN CUSTODY AT LARGE																			
										FELONY DV																			
										JUVENILE MISDEMEANOR																			
CHARGES										CHARGE AS CNTS																			
1. L/O-OBSTRUCTION OF FREE PASSAGE/SIDEWALK/MIAMI										ORD 1																			
2.																													
3.																													
4.																													
The undersigned certifies and swears that he/she has just and reasonable grounds to believe, and does believe that the above named Defendant committed the following violation of law: On the 27 day of MARCH 2018 at 08:40 at NW 2ND AVE & NW 14TH TER MIAMI, FL 33136 THE DEFENDANT WAS OBSERVED BY OFC. H. GONZALEZ (IBM 41285) SLEEPING ON A LARGE MATTRESS ON THE SIDEWALK LOCATED AT NW 2ND AVE AND NW 14TH TERR. THE MATTRESS WAS LOCATED IN THE CENTER OF THE SIDEWALK COMPLETELY OBSTRUCTING THE PASSAGE TO ANY PEDESTRIANS. THE DEFENDANT HAS BEEN OFFERED HOMELESS PLACEMENT BY THE MIAMI HOMELESS ASSISTANCE PROGRAM STAFF (THE GREEN SHIRTS) BUT REFUSED ANY ASSISTANCE. THE DEFENDANT HAS BEEN ADVISED OF THE CITY OF MIAMI ORDINANCES PROHIBITING OBSTRUCTING THE SIDEWALK AND GIVEN A WARNING IN SEVERAL OCCASIONS. THE DEFENDANT WAS...										[Continued on Next Page]																			
HOLD FOR OTHER AGENCY VERIFIED BY										DO NOT BOND OUT (Officer Must Appear at Bond Hearing)																			
I SWEAR THAT THE ABOVE STATEMENT IS TRUE AND CORRECT.										SWORN TO AND SUBSCRIBED BEFORE ME, THE UNDERSIGNED AUTHORITY THE 27 DAY OF MARCH 2018																			
GONZALEZ, C. Court ID: 001-41229 MPD										Sgt. J. 40904																			
0181687466										Report Generated at 03/27/2018 13:17:43 by 01534																			

1100290479

COMPLAINT/ARREST AFFIDAVIT CONT	OR	OR



















Exhibit 32



1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 MIAMI DIVISION  
4 CASE NUMBER 88-2406-CV-MORENO

5 MICHAEL POTTINGER, et al.,

6 Plaintiffs,

Courtroom 13-3

7 vs.

Miami, Florida

8 CITY OF MIAMI,

September 26, 2018

9 Defendant.

---

10 EVIDENTIARY HEARING  
11 BEFORE THE HONORABLE FEDERICO A. MORENO  
12 UNITED STATES DISTRICT JUDGE

---

13 APPEARANCES:

14 FOR THE PLAINTIFFS:

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1 Q. Were there any notices put out telling you that there's  
2 going to be cleaning of the sidewalks?

3 A. There was one notice on March 29th.

4 Q. Was it in English or Spanish?

5 A. It was in English.

6 Q. Do you read English?

7 A. Yes.

8 Q. Did you know that, therefore, there was going to be a  
9 cleaning on the sidewalk?

10 A. Yeah, but the only sign -- that March 29th sign that I'm  
11 talking about was on Southwest 2nd Street after I left, so I  
12 ignored it.

13 THE COURT: Okay. Thank you.

14 MR. HARRISON: Nothing further, Your Honor.

15 THE COURT: Have a good day.

16 (The witness was excused.)

17 THE COURT: Next witness. Who's next?

18 MR. TASEFF: Michael Donald.

19 THE COURT: Give me a number, please. They're not in  
20 alphabetical order, so you have to give me a number.

21 MR. GAMEZ: Your Honor, he is number 52 on their list.

22 THE COURT: Thank you.

23 You're Michael Donald, sir?

24 THE WITNESS: Yes, sir.

25 THE COURT: Raise your right hand, please, sir.

1           MICHAEL DONALD, PLAINTIFFS' WITNESS, SWORN.

2           THE WITNESS: Yes, sir.

3           THE COURT: Have a seat there. Thank you, sir. Tell  
4 me your name, please, sir.

5           THE WITNESS: Michael Donald.

6           THE COURT: All right. Go ahead.

7                               DIRECT EXAMINATION

8 BY MR. TASEFF:

9 Q. Mr. Donald, where do you live presently?

10 A. I currently live in Missouri.

11 Q. And do you have a family?

12 A. Yes.

13 Q. How long have you lived in Missouri now?

14 A. Well, I went back to Missouri this spring. That's where I  
15 grew up.

16 Q. Are you a veteran of the United States military?

17 A. Yes, sir, I am.

18 Q. Tell us about that.

19 A. From 1985 to 1988 I was an Army Ranger, 1989 I was in the  
20 Special Forces Reserves.

21 Q. Did you serve after that in the war in Iraq?

22 A. As a GS-12 equivalent Department of Defense contractor from  
23 2002 to 2007, both in Qatar, Kuwait, and immediately -- in 2003  
24 to 2007 in Iraq.

25 Q. Did you see combat action?

1 A. I was a high threat security person, and yes.

2 Q. Were you injured?

3 A. Yes, I was blown up in January of 2007.

4 Q. When did you return to the United States?

5 A. I was med-evac'd to Germany and then within two weeks, I was  
6 returned to America.

7 Q. Did you go through a period in your life after that when you  
8 became homeless and living in the streets of Miami?

9 A. Yes, I did.

10 Q. Were you living on the streets of Miami earlier this year,  
11 2018?

12 A. Yes, sir.

13 Q. Where were you living at that time, in January of 2018?

14 A. On the sidewalk on 2nd Street.

15 Q. Now, how is it that you came to become homeless?

16 A. I had a Dominican wife and she had cervical cancer and  
17 chemotherapy and I took out a series of those payday loans which  
18 were extremely high interest and I dug myself such a deep hole  
19 in debt that was the only real way I could try to pay off those  
20 loans and get out of debt.

21 Q. And did you go through a period of financial hardship?

22 A. 100 percent.

23 Q. Have you recovered from that somewhat?

24 A. Yes, I have.

25 Q. And who do you live in Missouri with at this time?

1 A. Well, from a previous divorce, I had lost that house and in  
2 order to preserve the 20 acres that I had there, we somewhat  
3 reconciled and now I live in the house that I used to own.

4 Q. Now, getting back to where you were in January, earlier this  
5 year, 2018, tell us exactly where you were sleeping on the  
6 streets of Miami.

7 A. On the lower section of the sidewalk towards The Wharf on  
8 2nd Street.

9 Q. Southwest 2nd Street?

10 A. Southwest 2nd Street.

11 Q. Where exactly would you stay on the sidewalk at that  
12 location?

13 A. Not blocking the sidewalk, but just right on the edge so  
14 anyone could pass by should they need to.

15 Q. Describe to His Honor how it is you actually would sleep on  
16 the sidewalk. What would you put down? How did you actually do  
17 that?

18 A. You get yourself a piece of cardboard. It's quite  
19 comfortable.

20 Q. Did you have personal property with you at that time?

21 A. Yes, I did.

22 Q. What did you have?

23 A. Oh, just all my belongings. I also had some Zomig nasal  
24 spray that was a little over a thousand dollars from Walgreens.

25 THE COURT: Say that again.

1           THE WITNESS: I had some Zomig nasal spray that was for  
2 migraine headaches --

3           THE COURT: Okay.

4           THE WITNESS: -- as well as just books and personal  
5 possessions.

6 BY MR. TASEFF:

7 Q. Where would you actually keep those items? How would you  
8 assemble them? What would you put them in?

9 A. Well, I had a tent for a little bit and then they would just  
10 be placed nicely and neatly and packed up along the edge of the  
11 fence line in the daytime.

12 Q. You suffer from headaches, severe headaches, as a result of  
13 what had happened to you during your term in the Armed Services?

14 A. That's correct.

15 Q. What do you suffer from?

16 A. I had a traumatic -- when I was blown up, I had a traumatic  
17 brain injury and that left me with some headaches.

18 Q. Now, earlier this year, in 2018, approximately February of  
19 this year, while sleeping on a sidewalk in the City of Miami at  
20 the Southwest 2nd Street location that you just described, did  
21 there come a time when the police presence in the area  
22 increased?

23 A. Absolutely. There was clearly a push to --

24 Q. Describe to His Honor what it is you saw and experienced.

25 A. About 5:00 or 6:00 in the morning, they would come by on

1 loudspeakers with their -- with, you know, the top lights on the  
2 police vehicle, as well as, you know, shining a spotlight,  
3 telling everyone they need to wake up and move on.

4 Q. What was that like? Tell us what that experience was like.

5 A. Well, it certainly wasn't what I was expecting and it was  
6 somewhat disconcerting. No one seemed to be violating the law  
7 to have something like that happen.

8 Q. What would the police do or say when this would happen?

9 A. They wanted everyone to get up and move because that's when  
10 they were going to do their -- basically their homeless sweep, I  
11 would call it, and begin their power washing, the two-week power  
12 washing, and take people's stuff and scour the sidewalks.

13 Q. How often or with what regularity would the police do this?

14 A. It seems like twice a week they were doing the scouring,  
15 just that area. The sidewalks were very clean, but it did have  
16 the purpose to run everyone off, did a good job.

17 Q. Now, when they would show up in the way that you described,  
18 what would you do?

19 A. I'm definitely not going to tangle with the police or even  
20 speak with them. I immediately got up and left.

21 Q. Where would you go?

22 A. I used to go to McDonald's and have a burrito in the  
23 morning.

24 Q. What would other people do?

25 A. They all scattered, they all drug [sic] their things around



1 the corner.

2 THE COURT: Well, why isn't it speculation? Could you  
3 see what the other people did?

4 THE WITNESS: Some people just drug their things around  
5 the corner and waited the police out until they left. Some  
6 people scattered.

7 THE COURT: Next question.

8 BY MR. TASEFF:

9 Q. How many other people in that area, approximately, were  
10 there at the time when these things would happen?

11 A. You know, they're scattered everywhere, but just in the 2nd  
12 Street area, there probably were 35, just in the 2nd Street area  
13 but, I mean, there are dozens and dozens more all around the  
14 area.

15 Q. What would happen to the property of people, other people  
16 that was left behind?

17 THE COURT: What did happen?

18 BY MR. TASEFF:

19 Q. What did happen?

20 A. The police come, tell everyone to leave, and then there are  
21 some like white pickups, I don't know if they're City workers or  
22 they're private contractors that throw all their stuff in the  
23 back of the pickup and take off with it.

24 Q. Did you actually witness that?

25 A. Multiple times, as well as I took a picture of them doing it

1 while I was standing on the 2nd Street bridge overlooking down  
2 that way after this had been going on for some time.

3 Q. Did you see the police in that general area clean other  
4 sidewalks in that area?

5 THE COURT: When you say the police, are the policemen  
6 doing the cleaning?

7 THE WITNESS: No, just they initially come and then  
8 after that, whatever -- I assume they're City workers, yes.

9 THE COURT: You're right, they are. Next question.

10 BY MR. TASEFF:

11 Q. Now, did you, yourself, experience a loss of property?

12 A. Yes, I did.

13 Q. Tell us what happened.

14 A. Well, during that time I had left early, I had left early  
15 that morning and later that day they came and did their cleanup  
16 and all my stuff was gone as well.

17 Q. Where would you leave your stuff specifically?

18 A. Definitely off the sidewalk, back up against the -- you  
19 know, as neatly as possible up against the fence.

20 Q. Prior to that time, had you ever left your stuff and gone  
21 somewhere else during the course of your day?

22 A. Yes.

23 Q. Would anything happen to your stuff when you would do that?

24 A. No, no. You know, usually there's someone that generally  
25 stays there, so it would keep the time theft down so --

1 Q. What did you experience in terms of loss? What did you  
2 lose?

3 A. Oh, clothes and books, and that Zomig nasal spray  
4 medication, just some personal items. I didn't lose any ID. I  
5 always have my ID with me.

6 Q. Now, you, yourself, have housing now, right?

7 A. Yes, sir.

8 Q. You live in a home?

9 A. Yes, sir.

10 MR. TASEFF: I have no further questions.

11 THE COURT: No cross-examination, right?

12 MR. GAMEZ: Just a few questions, Your Honor.

13 THE COURT: Really? Go ahead.

14 MR. GAMEZ: May it please the Court.

15 CROSS-EXAMINATION

16 BY MR. GAMEZ:

17 Q. Mr. Donald, good morning to you.

18 A. Good morning.

19 Q. Just a few questions. Thank you for your service.

20 Are you eligible for VA benefits?

21 A. I certainly am.

22 Q. And do you take full advantage of those?

23 A. Well, I use the Veterans Hospital anytime that I need to.

24 Q. Okay. And then the other question I had was: The  
25 individuals that are in the gallery today with the Green Shirts,

1 have you had encounters with them?

2 A. I don't -- I've never spoken with one in my entire life.

3 Q. Never of the individuals that are in here, none of them?

4 A. I've never spoken with one in my entire life.

5 Q. The personal property that was taken from you on that  
6 morning, you didn't actually see who took it, correct?

7 A. That's what everyone said that happened.

8 Q. Sir, you didn't see --

9 A. I did not see my personal property taken, but I have seen  
10 multiple person's property taken and placed in the back of a  
11 pickup.

12 MR. GAMEZ: Nothing further, Your Honor.

13 THE COURT: Thank you, sir. Have a good day. How did  
14 you get here?

15 THE WITNESS: I flew, sir.

16 THE COURT: Who paid for your way?

17 THE WITNESS: Well, I was injured in the war in Iraq,  
18 sir. I have my own money. I flew here.

19 THE COURT: Good for you. Thank you. Have a good day.

20 THE WITNESS: Thank you.

21 THE COURT: Safe travels to Missouri.

22 (The witness was excused.)

23 THE COURT: Next witness.

24 MR. TASEFF: Stephen Allen.

25 THE COURT: Give me a number. You know, on the

1 computer you can do this alphabetically. I don't know if you  
2 all know that. What's the number?

3 MR. TASEFF: 68.

4 THE COURT: 68. Mr. Wilson, right over here.

5 MS. NEILL: It's 67.

6 MR. TASEFF: It's 67, Judge.

7 THE COURT: I'm sorry, I called you by the wrong name  
8 because they gave me the wrong number. Okay?

9 So you're Mr. Allen, right?

10 THE WITNESS: Yes, sir.

11 THE COURT: A-l-l-e-n?

12 THE WITNESS: Yes, sir.

13 THE COURT: Raise your right hand.

14 STEPHEN ALLEN, PLAINTIFFS' WITNESS, SWORN.

15 THE WITNESS: Yes.

16 THE COURT: Have a seat, please, sir, and tell us your  
17 name.

18 MR. TASEFF: Tell us your name, please.

19 THE WITNESS: Stephen Allen.

20 THE COURT: How do you spell your first name?

21 THE WITNESS: S-t-e-p-h-e-n.

22 THE COURT: Okay. Thank you, sir.

23 Go ahead.

24 DIRECT EXAMINATION

25 BY MR. TASEFF:

1 Q. Mr. Allen, where do you live or stay at night presently?

2 A. Bayfront Park.

3 THE COURT: Where?

4 THE WITNESS: Bayfront Park.

5 THE COURT: Okay. Thank you.

6 BY MR. TASEFF:

7 Q. Where exactly in Bayfront Park?

8 A. Over by the bleachers, the pavilion.

9 Q. Tell us how is it you sleep at Bayfront Park at night.

10 A. Very uncomfortably, but there's several other people that  
11 are there and we are homeless. We sleep outside.

12 Q. Where were you staying earlier this year, in January and  
13 February of this year?

14 A. Over on 2nd Street here in Miami.

15 Q. Where on 2nd Street?

16 A. 2nd and 1st, it's just past the FedEx building, east of  
17 what -- they built a new lounge called The Wharf, in between  
18 that area.

19 Q. And where exactly on the sidewalk of that area would you  
20 stay or sleep?

21 A. On the right-hand side. I originally started on the  
22 right-hand side down towards The Wharf, on the sidewalk of  
23 course, but it was off to the side of the sidewalk.

24 Q. Tell Judge Moreno exactly how it is you would sleep on the  
25 sidewalk.

1 A. Well, we would just put our blanket down, maybe had a  
2 sleeping bag at one time. There's a fence that goes around the  
3 parking lot. We would be right close to the fence and we would  
4 just go to sleep, get up in the mornings, pack our stuff. We  
5 had other options where we could go to, the Camillus House.  
6 There was other places where we could go eat and still try to be  
7 productive, but at the same time still homeless.

8 Q. How is it you became homeless recently, this time?

9 A. In September when the hurricane came through, Hurricane  
10 Irma.

11 Q. What happened as a result of the hurricane?

12 A. Well, I became homeless, it took part of the roof off. I  
13 had a home, took part of the roof off and I became homeless. I  
14 didn't own the home, I rented it, and the gentleman that owned  
15 the home, he was going through a hurricane himself in Houston,  
16 Texas with his mother. So he was -- their house was completely  
17 destroyed there, so I had to move. I had to move out of there.  
18 I didn't have enough money. I had some money saved, but I  
19 didn't have enough for first and last rent, so I just became  
20 homeless. It was the first time. I'm 66 years old, first time  
21 it ever happened to me and --

22 Q. All right. Now, in January or February of this year, when  
23 were you staying on Southwest 2nd Street, did you have or see  
24 interaction with the police?

25 A. Yes, they came in through a couple of times, told us we had

1 to move, move off the street, actually witnessed them taking  
2 other people's things, throwing them away. Not just the City  
3 police, but there was another -- it's called -- SFM was on the  
4 sides of the truck, they were with the police. I never actually  
5 seen them throw mine away, but it had happened twice to me in  
6 February and March.

7 Q. Tell the Judge first what it is you witnessed happen to  
8 other people's property.

9 A. They would pull up -- in fact, I seen it at three different  
10 locations here in Miami unfortunately. Being homeless you do  
11 travel a little bit to one area, to another shelter, maybe to  
12 get clothing, to get something to eat.

13 THE COURT: Have you ever slept in a shelter?

14 THE WITNESS: Yes, sir, I have.

15 THE COURT: Which one?

16 THE WITNESS: The Camillus House. When I came down --

17 THE COURT: How hard is it to get into the Camillus  
18 House?

19 THE WITNESS: They have rules. The Green Shirts,  
20 they're present. You have to go through a police officer or the  
21 Green Shirts, the Trust Fund. There's a waiting list. I mean,  
22 it's very seldom --

23 THE COURT: How long did you wait until you got in and  
24 slept?

25 THE WITNESS: I would say, calling the hotline, over a



1 month. It was over a month.

2 THE COURT: And you called how many times?

3 THE WITNESS: Every day, you call every day. There's a  
4 secretary there, her name is Stephanie, and you just get on the  
5 list, you know. They're not going to call you, contact you, but  
6 I was fortunate enough, I did get ahold of a Green Shirt one  
7 morning and he did get me in, he did.

8 THE COURT: So he was helpful?

9 THE WITNESS: He was very helpful. You only get to  
10 stay in the shelters that are here -- they have a limit of 60  
11 days.

12 THE COURT: So you stayed for 60 days?

13 THE WITNESS: Yes. It is a temporary solution to the  
14 problem being homeless, but then again, when you are there --  
15 and you're very grateful for it. It is a good program, but the  
16 thing is, once you're accustom to having a roof over your head,  
17 even though it's a shelter, the 60 days is up, and then you're  
18 right back on the street. So it's not --

19 THE COURT: Are you working?

20 THE WITNESS: No, sir. I'm retired to come here to  
21 retire from Miami [sic]. I'm 66.

22 THE COURT: Do you get Social Security?

23 THE WITNESS: No, sir. In fact, when I came here I had  
24 a little money saved and I was going to apply for it at 64, but  
25 you only get 70 percent of it. So I said if I can hold out a

1 couple of years, you know, here and there, I'll get my 100  
2 percent. I haven't done it yet.

3 THE COURT: Well, that's a personal decision, but, you  
4 know, sometimes it's better to get things up front than to wait,  
5 especially if you don't have a home, right?

6 THE WITNESS: Well, at the time I did.

7 THE COURT: How about now?

8 THE WITNESS: That's something I've got to decide on.  
9 But there's a thousand dollars difference there, between now and  
10 two more years.

11 THE COURT: Where are you living now?

12 THE WITNESS: I'm homeless.

13 THE COURT: Well, that Social Security could come in  
14 handy, couldn't it?

15 THE WITNESS: Yes, sir, it could.

16 THE COURT: For rent, couldn't it?

17 THE WITNESS: It's still not going to be enough for  
18 rent, not in Miami.

19 THE COURT: How much would it be? Do you know how much  
20 it is?

21 THE WITNESS: The total amount?

22 THE COURT: No, every month if you apply now.

23 THE WITNESS: About 1200.

24 THE COURT: 1200 a month. Okay.

25 BY MR. TASEFF:

1 Q. Can you can you find housing here in Miami? Have you tried?

2 A. Oh, goodness, yes. There's no way I could afford first and  
3 last. In fact, I just read in the magazine that Miami-Dade  
4 County is the highest in the nation for rent. The average rent  
5 here is \$1800 a month. That's a lot of money and it's just hard  
6 come up with that money. When you hit bottom, how do you do it?

7 Q. Now, the person that you were living with at a time, who was  
8 that person? Mr. Blasko?

9 A. Oh, Michael Blasko, yes. Unfortunately, he moved out of  
10 state, he's not here no longer, but he was with me, yeah, the  
11 whole time.

12 Q. Fortunately, he's back on his feet.

13 A. He is. He went back home and he had children and stuff, you  
14 know, family matters, and they got him back home. He just  
15 couldn't make it here.

16 Q. And that's the person you were sharing a space with,  
17 correct?

18 A. Yes, sir.

19 Q. All right. And Mr. Blasko was the person who was with you  
20 while you were experiencing what you described on Southwest 2nd  
21 Street?

22 A. Yes. Yes, he is.

23 THE COURT: Is he going to be a witness?

24 MR. TASEFF: He is back in Massachusetts, Judge. He's  
25 on our list but we --

1 THE COURT: So maybe we shouldn't talk about him.

2 MR. TASEFF: Well, he was describing his -- he was  
3 living with him.

4 THE COURT: I know.

5 MR. TASEFF: I wanted to identify who that was.

6 THE COURT: Okay. Because that helps me make what  
7 decision?

8 MR. TASEFF: Pardon?

9 THE COURT: That helps me make what decision?

10 MR. TASEFF: It helps me what?

11 THE COURT: Make what decision.

12 MR. TASEFF: His description of where he was staying  
13 and the arrangements that he had.

14 THE COURT: Okay.

15 BY MR. TASEFF:

16 Q. Mr. Allen, when you were staying on the sidewalk on  
17 Southwest 2nd Street, during the day, would you get up and leave  
18 your property? Where would you go, number one; and what would  
19 you do with your property, number two?

20 A. I always woke up early, I'm usually up about 5:00, 5:30 in  
21 the morning. By 6:00 I'm definitely gone. I would pack up my  
22 stuff, put it to the side very neat. Now, it wasn't a lot of  
23 stuff, it was just personal items, some clothing, and I would  
24 either go to eat, get something to eat, go get cleaned up.

25 THE COURT: Where would you get cleaned up?

1           THE WITNESS: At the Camillus House. Actually Monday  
2 through Friday you're allowed -- if you're the first 100 people  
3 to get in, you're allowed to take a shower. Tuesdays and  
4 Thursdays you're also allowed to change your clothing out, and  
5 you get to eat breakfast. So you're not going to starve and you  
6 don't have to walk around real dirty. You can stay clean, it's  
7 just the fact that you're homeless that's kind of bothering.

8 BY MR. TASEFF:

9 Q. Now, when you would leave during the day or early in the  
10 morning, what exactly did you see the police do to property that  
11 was left behind by others?

12 A. At first, they really wasn't doing anything, they would ride  
13 by and check. I am from old school, I always believe the police  
14 are your best friends. If you need help, run to a police  
15 officer. Unfortunately, things have changed a little bit now,  
16 but there are still a lot of good people out there that are  
17 willing to help homeless people. But every now and then you  
18 would see, you know, you could get off the sidewalk, go, you  
19 know, and see they're not be as courteous as you would think  
20 they should be, but again, just to take somebody's stuff and  
21 throw it away, no.

22 Q. You saw that happen?

23 A. I have seen that happen several times and have actually took  
24 pictures of it, yes.

25 Q. All right. Now, did you, yourself, have your property

1 taken?

2 A. I had it taken in February, which was a lot of stuff that  
3 was really my personal stuff, my birth certificate, things like  
4 that, pictures of my family. I did not witness it taken, but  
5 the other people did witness it being taken. And then again, it  
6 happened in March. I'd recovered some stuff. Thank God I had  
7 my ID with me, but as far as, you know, birth certificate,  
8 things like that, I've never recovered yet.

9 Q. What else did you lose?

10 A. Quite a bit the first time, clothing, my laptop. It's an  
11 old laptop but, Lord, it had my whole life on it. In fact, the  
12 first time, that morning I had just went and washed clothes,  
13 went to the laundromat and washed them. And of course, being  
14 homeless, I'm not the type of person that wants to carry around  
15 a lot of luggage. I don't really want people to know I'm  
16 homeless. I don't want to act the part or look the part, but it  
17 was just personal items. They meant a lot to me actually.

18 Q. What was it like to lose your property?

19 A. It was kind of devastating. It makes you mad. It makes you  
20 angry. Being homeless -- and I could never figure out why other  
21 homeless people sometimes steal from homeless people. That  
22 never made sense to me. If you don't have a lot, why take it?  
23 But to have an authority, a person in an official authority  
24 position take your stuff, it makes you angry. You can't help  
25 but get angry about it.

1 MR. TASEFF: I have nothing further.

2 THE COURT: You're going to cross-examine him?

3 MR. HARRISON: Briefly, Your Honor.

4 THE COURT: You're sure?

5 MR. HARRISON: Yes.

6 THE COURT: Did I hear correctly he did not witness the  
7 taking?

8 MR. HARRISON: Correct, Your Honor.

9 THE COURT: You're still going to ask him questions?

10 MR. HARRISON: Two questions, Your Honor.

11 THE COURT: Two questions. I'm listening. Number one.

12 CROSS-EXAMINATION

13 BY MR. HARRISON:

14 Q. Do you know that man right there, James Bernat?

15 A. Yes, sir.

16 Q. Has he offered you help and shelter before?

17 A. He has never offered me -- no.

18 MR. HARRISON: Can I have one more?

19 THE COURT: That was really helpful, wasn't it?

20 MR. HARRISON: It was.

21 THE COURT: See, that was really, really helpful to the  
22 case.

23 MR. HARRISON: May I have one more?

24 THE COURT: Go ahead.

25 BY MR. HARRISON:

1 Q. You've been to Camillus House 12 times?

2 THE COURT: I can't hear you.

3 BY MR. HARRISON:

4 Q. You have been to Camillus House 12 times at least?

5 A. Yes, sir.

6 Q. Do you know that the day program that you enjoy is paid for  
7 by the City of Miami?

8 A. No, I didn't know that.

9 Q. Well, now you do.

10 MR. HARRISON: Thank you, Your Honor.

11 THE COURT: All right. Thank you, sir. You are  
12 excused.

13 (The witness was excused.)

14 THE COURT: Next witness.

15 MR. TASEFF: Eli Halter, Number 26.

16 THE COURT: Right over here, Mr. Halter. Raise your  
17 right hand.

18 ELI HALTER, PLAINTIFFS' WITNESS, SWORN.

19 THE WITNESS: Yes, sir.

20 THE COURT: Have a seat please, sir. Thank you. When  
21 you get comfortable, tell us your name.

22 THE WITNESS: My name is Eli Halter.

23 THE COURT: All right. Go ahead.

24 DIRECT EXAMINATION

25 BY MR. TASEFF:



1 Q. Mr. Halter, are you presently homeless?

2 A. Yes, sir, I am.

3 Q. Where do you live at night? Where do you stay at night?

4 A. Southwest 1st Street, under the bridge.

5 THE COURT: I'm sorry, a little louder.

6 THE WITNESS: Southwest 1st Street, right here under  
7 the bridge, the 95 bridge.

8 THE COURT: Thank you.

9 BY MR. TASEFF:

10 Q. Are you a veteran of the United States military?

11 A. Yes, sir.

12 Q. Tell us about that. Where did you serve, and when, and what  
13 branch of the military?

14 A. I served in the United States Marine Corps from 1981 to  
15 1984.

16 Q. Earlier this year, in January or February of this year,  
17 where were you staying?

18 A. I was actually staying on Southwest 2nd Street, which is one  
19 street over.

20 Q. Tell Judge Moreno exactly where you stayed and describe to  
21 him how it is you slept at night.

22 A. I stayed -- there's -- I guess it's about six feet, the  
23 sidewalk ends and it goes over parallel with the sidewalk, it's  
24 dirt or whatever, and I would stay there, on that patch right  
25 there on the side of the sidewalk.

1 Q. Tell us, what would you sleep on? Where would you put your  
2 things?

3 A. Well, it was a daily chore of collecting cardboard. I  
4 collect cardboard to sleep on.

5 THE COURT: We don't really have a dispute, do we, that  
6 there are homeless who sleep in these different areas? I have  
7 seen the video, I've seen the picture. I go out to lunch. I  
8 see it when I leave at night, and there's probably no dispute,  
9 at least from what I have personally observed, although I  
10 shouldn't take into consideration what I personally observed,  
11 but since I'm telling you now and the witness is struggling with  
12 answering the question, which I can understand, that the  
13 homeless when they sleep, being cognizant of so-called rules,  
14 sleep towards the wall.

15 So do we have to go through each one and on cardboard  
16 boxes and they have some -- I mean, are we going to go through  
17 that with all 30 of them and make them -- the only reason I'm  
18 interfering now is because the witness is choked up about it,  
19 but there's really no dispute that that is what's happening,  
20 right? Is there?

21 MR. HARRISON: No, sir, from the City.

22 THE COURT: So if there's no dispute, why go through  
23 all of these individuals to show that's where they sleep, they  
24 are against the wall at night? I've asked the questions and I  
25 suspect -- the issue of the bathroom -- you can tell maybe I'm

1 obsessed with that, as I was when I approved the Judge Atkins  
2 settlement while he could not do it because I hate to say it,  
3 and if I had to do it over again, I probably might do something  
4 different that -- that's probably the major problem.

5 I hate to say it, but the major problem is, in my view,  
6 hygiene for the homeless who are sleeping, for the property  
7 owners who are there, for the people who work downtown, for the  
8 people who visit downtown. So the incidents of cleanup, whether  
9 they're done with diplomacy or not -- are you going to argue  
10 that the sidewalks shouldn't be cleaned?

11 I mean, one of your best witnesses, who was  
12 cross-examined, said they do a pretty good job of cleaning up,  
13 and 5:00, 6:00 in the morning seems like a good time to do it.  
14 So I'm thinking how is that helping me make any decision? If we  
15 go through 30 individuals who say, you know, we sleep towards  
16 the wall, we leave our belongings there, the City can always  
17 argue things are taken. We go one by one, I'm taking notes, I  
18 can make credibility findings. Some people I believe, some  
19 people I don't. You can probably guess so far which ones I  
20 believe and which ones I don't, but how --

21 MR. TASEFF: I can address that, Judge.

22 THE COURT: Help me.

23 MR. TASEFF: I can address that. First of all --

24 THE COURT: I'll be here as long as it needs to be, if  
25 not today, next week, the following week, but how are we going

1 to do this?

2 MR. TASEFF: First of all, we appreciate the Court's  
3 sensitivity, and we appreciate the City now saying that that's  
4 not an issue. That perhaps was a factual issue as to whether or  
5 not people, our clients, our witnesses, were violating the law  
6 or sleeping in a way that might arguably be unlawful. That  
7 seems not to be in dispute. We won't go there.

8 THE COURT: I suspect a couple are. Sometimes people  
9 even block the street. As I go home every night, there's a  
10 fellow who keeps getting closer and closer to the street. Okay.

11 MR. TASEFF: Correct.

12 THE COURT: But there are incidents like that. There  
13 are going to be incidents when you have several hundred people,  
14 just like there may be incidents when you have several dozen  
15 police officers.

16 MR. TASEFF: We obviously no longer need to dot that I  
17 or cross that T. We understand.

18 THE COURT: Okay.

19 MR. TASEFF: Second, as to the issue of cleaning, and I  
20 don't know if this is the appropriate time to respond to this,  
21 but we're never had an issue with the fact that sidewalks need  
22 to be cleaned and I think sanitation --

23 THE COURT: It helps the people that are there.

24 MR. TASEFF: It's the issue, Judge -- the issue, Judge,  
25 is how it was done and how they went about it. That's the issue

1 and that infringes on the concerns and interests and rights that  
2 we've claimed about. But we have no issue with that.

3 THE COURT: Well, I don't know. Now, whether the  
4 lawyers have done their homework -- and hopefully my feelings  
5 for the veterans are shared by others because we talked about  
6 how we help veterans and I've heard testimony before today that  
7 there is assistance for them. Obviously, it probably failed  
8 with a couple of people, but surely the City with the County, we  
9 could help veterans of all people. I don't know whether you  
10 strategically -- this witness is which one, the third witness?

11 MR. GAMEZ: Fourth, Your Honor.

12 THE COURT: Fourth, two veterans. You do that  
13 strategically because they know I'm partial to veterans, like  
14 most people would be, which is very smart. But I have to have  
15 another hearing -- what else are you going to ask him, his  
16 property was taken?

17 MR. TASEFF: Tell the Judge --

18 THE COURT: Did you see your property being taken?

19 MR. TASEFF: He saw it.

20 THE WITNESS: Yes, sir, I saw my property and other --

21 THE COURT: You saw it?

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay. You saw it, not from what people  
24 told you?

25 THE WITNESS: No, sir.

1 THE COURT: All right. What did you see?

2 THE WITNESS: They'd come with the truck and they would  
3 take your stuff.

4 THE COURT: Your stuff?

5 THE WITNESS: My stuff, other people's stuff.

6 THE COURT: Did you say, hold on a second, that's my  
7 stuff say?

8 THE WITNESS: Once they had their hands on the  
9 property, you couldn't get your property back. It wasn't like,  
10 hey, that's my stuff, can you put it, I'll get it, I'll take it.  
11 That didn't happen. Once they had their physical hands on your  
12 stuff, it went in the pickup truck and it was gone.

13 THE COURT: Where were you, across the street?

14 THE WITNESS: I was a few feet away from my property.

15 THE COURT: Was it in a bag, backpack?

16 THE WITNESS: I had it in a plastic bag. I've also had  
17 it in a 5-gallon bucket. They have taken my 5-gallon bucket  
18 with a lid to keep things safe and dry, however you want to say  
19 it. I've even had stuff chained up. They have come and cut --

20 THE COURT: Why didn't you take it with you when they  
21 said, hey, cleanup time 5:00, 6:00 in the morning, let's go?

22 THE WITNESS: No, sir, this didn't occur at 5:00, 6:00,  
23 this was other times they would come take your stuff.

24 THE COURT: When was that?

25 THE WITNESS: The last time they took my stuff, I had

1 property chained up. I had a chair, I had a 5-gallon bucket --

2 THE COURT: Give me a month.

3 THE WITNESS: May.

4 THE COURT: May of this year?

5 THE WITNESS: Yes, sir.

6 THE COURT: Where?

7 THE WITNESS: Southwest 1st.

8 THE COURT: And what time was this?

9 THE WITNESS: Midmorning, 10:00-ish.

10 THE COURT: What happened?

11 THE WITNESS: I chained my stuff up. I figured if I  
12 chained it up with a chain and a lock, it would be safe. When I  
13 came back, all my stuff was gone.

14 THE COURT: But you didn't see anything.

15 THE WITNESS: I physically didn't see.

16 THE COURT: Tell me about anything you saw being --

17 THE WITNESS: Physically saw, yes, sir.

18 MR. TASEFF: Can I help in that regard, Judge?

19 THE COURT: Yes. I'm sure you want to lead him, too.

20 MR. TASEFF: No, I want to talk about what he's  
21 attested to in his declaration as to what happened in February  
22 at the specific location. I also want to ask him about his  
23 work.

24 BY MR. TASEFF:

25 Q. Do you work, Mr. Halter?

1 A. Yes, sir, I do.

2 Q. Tell the Judge where you work.

3 A. I work at Pacesetters. It's like a labor pool, day labor.

4 THE COURT: The one right here, a block away?

5 THE WITNESS: No, sir, on Flagler, 10th and Flagler  
6 Street, Little Havana.

7 THE COURT: Okay.

8 BY MR. TASEFF:

9 Q. How early do you have to get to Pacesetters to get work?

10 A. If you're not there by 5:00, you might have a 50/50 chance  
11 of working. If you are there before 5:00, 4:30-ish --

12 THE COURT: Why are you homeless? Tell me.

13 THE WITNESS: I am lucky to have survived two  
14 hurricanes.

15 THE COURT: He's choking up again. Have people offered  
16 you help to get shelter or housing?

17 THE WITNESS: No.

18 THE COURT: No one has?

19 BY MR. TASEFF:

20 Q. Tell him about you VA benefits.

21 A. The VA told me --

22 THE COURT: Okay. I'm going to give you a break.

23 A. -- I wasn't homeless enough to qualify.

24 THE COURT: All right. I'm going to give you a break.

25 So why don't you go outside, relax, go to the bathroom, and come



1 back. Okay? Can you do that?

2 THE WITNESS: Yes, sir.

3 THE COURT: We'll take a 15-minute break. All right?  
4 With the witness. Thank you. You can go.

5 (The witness was excused.)

6 THE COURT: All right. You've got how many people, 30?

7 MR. TASEFF: Yeah.

8 THE COURT: More or less?

9 MR. TASEFF: We are trying to --

10 THE COURT: More or less, 30. You're going to  
11 cross-examine all 30. Some of them may not know exactly what  
12 happened, others will. Some are veterans, some are not. Some  
13 are eligible to get Social Security and they're waiting to get  
14 it in the future. I guess everybody makes their own decision.

15 MR. TASEFF: That's Mr. Halter's case.

16 THE COURT: I know.

17 MR. TASEFF: Judge, I'm happy to ask all of this stuff  
18 on direct and, you know, I know you are very interested in that  
19 and we can do that.

20 THE COURT: But see --

21 MR. TASEFF: I'm trying to streamline this to fit all  
22 our concerns.

23 THE COURT: I'm not faulting you. I'm just trying to  
24 figure out what the solution is to the problem. Remember what I  
25 said the other day: Whether the Pottinger Agreement is

1 terminated, whether the Pottinger Agreement is modified, or  
2 whether it stays the same, at least for the immediate future  
3 things are going to be the same. They really are. There's  
4 probably no dispute about that.

5 I know the plaintiffs will say, as soon as you do that,  
6 the stormtroopers are going to come in. No, they're not. Maybe  
7 later on, maybe little by little things will change. I don't  
8 know and I haven't made up my mind. But surely now we see that  
9 everybody is in a different category, right? What we thought,  
10 because we can go through a lot of people -- are you going to  
11 call anyone with mental health problems or with drug addiction  
12 problems --

13 MR. TASEFF: Well --

14 THE COURT: -- or alcoholics? I'm not saying you  
15 should or you shouldn't, but so far what I see are people who  
16 don't have any of those issues, right? Would you agree?

17 MR. TASEFF: Well, a lot of these folks have issues.  
18 They're either in remission or they're --

19 THE COURT: These four names that you've called.

20 MR. TASEFF: Yes.

21 THE COURT: They're in remission from what?

22 MR. TASEFF: Well, clearly Mr. Rhodes is depressed and  
23 suffered from depression. Okay.

24 THE COURT: I don't know about the clearly, but we can  
25 take that later. But where are we going to go at the end? So

1 we're going to put all these people in different categories,  
2 right? Some are more credible than others. That's what's going  
3 to happen. Some have witnessed things, others have not. And  
4 then at the end, you are going to say this is proof that they're  
5 not complying with the Pottinger Agreement and enter what? A  
6 Contempt Order. And tell them what?

7 MR. TASEFF: Not do it anymore, to stop, number one.

8 THE COURT: To stop doing what?

9 MR. TASEFF: To stop doing what they did to these  
10 people.

11 THE COURT: Doing what?

12 MR. TASEFF: Stop taking their property, a violation of  
13 the Fourth Amendment.

14 THE COURT: Okay. Without the legal, the physical  
15 stuff.

16 MR. TASEFF: The physical stuff, stop taking their  
17 personal property, stop violating their personal integrity, stop  
18 violating their right to be free to be on the sidewalk and have  
19 police officers come up and tell you that you have to leave,  
20 that you can't stay anymore, all of those things.

21 THE COURT: Hold on. All right. Everybody agrees, do  
22 they not, that cleaning is a good thing?

23 MR. TASEFF: Judge, as I said a moment ago, we don't  
24 dispute that.

25 THE COURT: I start with the easy part. Okay. So

1 cleaning is a good thing. All right.

2           So according to some witnesses, certainly to all the  
3 witnesses who have been called, there's allegations of property  
4 being taken. So no matter whether the Pottinger Agreement  
5 survives, whether the Pottinger Agreement is terminated, or  
6 whether the Pottinger Agreement is modified, you all -- not  
7 we -- you all have to come up with a system regarding the  
8 property. There's got to be some system of the property,  
9 lockers, there's got to be something. Because if you leave  
10 things that have value to others -- see, the people who are  
11 picking it up, they think it's garbage because sometimes it's  
12 mixed up with garbage. They think it's abandoned property.

13           I mean, that's what the City is going to argue: We  
14 just pick up things that have food and have deteriorated. You  
15 saw the video, Judge. And you're going to say these are the  
16 things that are most important to these individuals. Okay. And  
17 you're probably both right. How do we segregate the stuff that  
18 should be thrown out?

19           MR. TASEFF: May I add something as well?

20           THE COURT: How do we do that? No matter what I do in  
21 a couple of months, because that's how long it's going to take  
22 me probably to go through all the witnesses, how do we do that  
23 with the property?

24           MR. TASEFF: Let me just say this: The property is an  
25 issue. It's not just the property.

1 THE COURT: I know.

2 MR. TASEFF: It is the police action of telling them to  
3 move, to use their presence, to use their --

4 THE COURT: But you have to tell people to move while  
5 you're pressure cleaning, don't you? Have you ever seen  
6 pressure cleaning? You don't want to be there.

7 MR. TASEFF: Judge, perhaps I can put it this way:  
8 They can clean those streets at a time other than 5:00 or 6:00  
9 in the morning. They can clean it later in the day.

10 THE COURT: Your last witness gets up at 5:00 and 6:00  
11 because if you don't get there at 5:00, you can't get into the  
12 Camillus House. Another witness said, I want to get to the  
13 labor pool; if not, I don't get a job. You know what? Some  
14 people get up at 5:00 or 6:00 in the morning, especially if they  
15 are not working.

16 Let's be realistic about it. It's probably the best  
17 time to clean because people aren't working downtown. And guess  
18 what? The reason they are probably cleaning during that time, I  
19 know I'm being overly practical, is because I believe some  
20 people who are sleeping there go to the bathroom during the  
21 night. Agreed?

22 MR. TASEFF: Agreed.

23 THE COURT: So it needs to be cleaned up. So if the  
24 issue is when is the cleanup, what would you suggest would be  
25 the cleanup time?

1           MR. TASEFF: A regular schedule that doesn't wake  
2 people up and terrify people on the street, such as we've had  
3 testimony of; to do it in a way that's respectful and respects  
4 their dignity and doesn't just take their property.

5           THE COURT: But see, the property is something that we  
6 can work with. But you know what? One of your best witnesses  
7 is Michael Donald. Do you agree?

8           MR. TASEFF: They're all excellent.

9           THE COURT: Well, I've only heard four. I think he's  
10 your best witness, but I'll wait until you all argue. It's just  
11 a preliminary thinking, right? They're power washing the  
12 sidewalks. He thought they are very clean. They were doing a  
13 good job. Now, he is a veteran, he's been to Iraq, so  
14 obviously, even though he's affected by homeless, he can take  
15 it. So we've got to come up with something that doesn't resolve  
16 the problem, but is better than --

17          MR. TASEFF: Judge, let me add this.

18          THE COURT: I am going to do another hearing because  
19 people are waiting.

20          MR. TASEFF: Okay.

21          THE COURT: You know I give little sermons and if they  
22 are worthless, so be it.

23          MR. TASEFF: May I just say one thing?

24          THE COURT: I'll hear 30 people, I'll hear the  
25 cross-examination, as fruitful as you think it's going to be,

1 and then I'll let you make your closing arguments and I'll write  
2 an opinion. And it will be wonderful, it will be all over the  
3 headlines one way or another. But you know what? The problem  
4 is still going to be there. It's still going to be there.

5 MR. TASEFF: Judge, just one or two points. Number  
6 one, it's not just the cleanings. They also do these -- they go  
7 around and they get "contaminated" or property off the streets.  
8 So there's property seizures that happen --

9 THE COURT: Do you not think there's some property  
10 that's contaminated?

11 MR. TASEFF: I don't doubt that much of what they pick  
12 up --

13 THE COURT: You saw that video, right?

14 MR. TASEFF: Yes, I did.

15 THE COURT: Rats and flies and food. When you have  
16 food --

17 MR. TASEFF: Undisputed, Judge, undisputed.

18 THE COURT: Okay.

19 MR. TASEFF: Undisputed. The other question the Court  
20 had to us is: How are you going to categorize this? Let me  
21 suggest the following:

22 As far as the categorization of the witnesses that we  
23 present, whether they are chronic, whether they are this or  
24 that, that should have no bearing on what action was taken in  
25 regard to their person and their personal property. In the same

1 was a police officer --

2 THE COURT: As a lawyer on a contempt or if you had a  
3 civil action, you're right. Okay. You're right. I understand  
4 that.

5 MR. TASEFF: Okay.

6 THE COURT: But I know that's not the only thing you  
7 want.

8 MR. TASEFF: No, but I thought you were alluding to --  
9 clearly, you have to make credibility determinations. We're  
10 completely aware of that, but in terms of this issue that is  
11 part of this case or has become part of this case, is whether  
12 this use of the term "chronic homeless" or "resistant" or  
13 whatever, the actions that we are claiming happened and have  
14 evidence to present to support our position, it doesn't matter  
15 if that person is "chronic" or resistant, or they've been  
16 homeless for one night. It shouldn't and doesn't and legally --

17 THE COURT: I understand. I understand that.

18 MR. TASEFF: Okay.

19 THE COURT: Maybe I'm doing something I shouldn't do,  
20 look at the whole picture. And you are looking at, hey, I want  
21 to win my lawsuit and get these 30, 40, 50, 60, 70 individuals  
22 what?

23 MR. TASEFF: Their day in court.

24 THE COURT: They're getting more than their day in  
25 court.



1           MR. TASEFF: The assurance that this won't happen again  
2 and it shouldn't happen to them or anyone else, and as the  
3 original Pottinger settlement and judgment had, to properly  
4 compensate them.

5           THE COURT: Okay. And how do we determine proper  
6 compensation?

7           MR. TASEFF: Well, as I mentioned yesterday, that, I am  
8 sure, would follow the formula and the approach that was taken  
9 in this case, as it is in many other cases that I know Your  
10 Honor is familiar with, where there's an assessment and either a  
11 general sum to each person on this claim versus that claim.  
12 That's another other day.

13           THE COURT: And when the case is over, let's go, and  
14 then we still have the issues. Okay. That's what we do a lot  
15 in court. All right.

16           Does the City want to say anything since I let the  
17 plaintiff say anything? I don't want you to think that --

18           MR. GAMEZ: Nothing, Your Honor.

19           THE COURT: Okay. All right. Come back in 15 minutes.  
20 All right?

21           I'm sorry, sir. Can you come back in 15 minutes?

22           THE WITNESS: Yes, sir.

23           THE COURT: All right.

24           (There was a brief recess at 11:21 a.m.)

25           THE COURT: Okay. All right. You're ready? Finish

1 with his direct. Anything else?

2 BY MR. TASEFF:

3 Q. Mr. Halter, I just want to ask you specifically where we  
4 left off, what you witnessed between February and April of this  
5 year on Southwest 2nd Street early in the morning when the  
6 police and City workers would show up. Tell the judge exactly  
7 what you saw.

8 A. They would show up with lights and on the bullhorn telling  
9 us we had to get up, we had to move, and then the pickup truck  
10 would come, and if you weren't there, your stuff got thrown  
11 away. If you were there, you had a chance to move your stuff.

12 Q. What would they do with property that belongs to other  
13 people who were not there?

14 A. It went in the pickup, they threw it away in the back of the  
15 pickup truck. I don't know where they'd take it, but it was  
16 just like thrown, like you would throw it away. It just got  
17 chucked in. It wasn't like orderly put in, it was just thrown  
18 in.

19 Q. Okay.

20 MR. TASEFF: I have nothing further, Judge.

21 THE COURT: Cross-examination.

22 MR. GAMEZ: Your Honor, if I may, just for convenience,  
23 I'd be happy -- I only have on one question on  
24 cross-examination. May I do it here from my --

25 THE COURT: Sure.

1 MR. GAMEZ: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. GAMEZ:

4 Q. Mr. Halter, first and foremost, thank you for your service.

5 A. Thank you, sir.

6 Q. Sir, I have one question for you. Isn't it true that  
7 Mr. Tony Witherspoon -- stand up, please -- for the Green Shirts  
8 of the City of Miami and Homeless Outreach has offered you  
9 shelter, sir, no less than five times?

10 MR. TASEFF: I'm going to object to this in-court  
11 confrontation.

12 THE COURT: I'm going to overrule the objection. Go  
13 ahead and use the lectern, though. Apparently, it's more than  
14 one question. Go ahead.

15 BY MR. GAMEZ:

16 Q. Mr. Halter, isn't it true that Mr. Tony Witherspoon, who's  
17 sitting here in the gallery, standing up before you right there,  
18 for the Green Shirts and the City of Miami and Outreach  
19 Services, hasn't he offered you shelter no less than five times?

20 A. He's a very nice man, but he's not offered me shelter five  
21 times.

22 Q. He's never offered you shelter?

23 A. He's offered me shelter. He's actually taken me to shelter.

24 Q. So earlier today when you testified when the Court was  
25 asking you whether you had ever been offered shelter, and you

1 said no, that was incorrect?

2 A. Offered shelter? I've been offered shelter a couple of  
3 times.

4 Q. Two times?

5 A. About two times.

6 Q. So if he said more than five times, he's lying?

7 MR. TASEFF: Objection.

8 THE COURT: I'm going to sustain to that question.

9 THE WITNESS: Mistaken.

10 MR. GAMEZ: Your Honor, no further questions.

11 THE COURT: All right. Thank you, Mr. Halter, you're  
12 excused.

13 THE WITNESS: Can I say something?

14 THE COURT: No, you're excused. Thank you, sir.

15 (The witness was excused.)

16 THE COURT: Next witness. You've already said it. Who  
17 is the next witness?

18 MR. TASEFF: Donald White, Number 22.

19 THE COURT: Take the next one. That happens.

20 Is that him? Mr. White, right, sir? Right over here, please.

21 Your right, my left. Get comfortable in that seat and then I'll  
22 swear you in. All right? Thank you, sir.

23 Raise your right hand, please, sir.

24 DONALD WHITE, PLAINTIFFS' WITNESS, SWORN.

25 THE WITNESS: Yes, I do, sir.

1 THE COURT: Turn that chair around a little bit so you  
2 can look at your lawyer, and tell us your name, please, sir.

3 THE WITNESS: My name is Donald White.

4 THE COURT: All right. Go ahead.

5 DIRECT EXAMINATION

6 BY MR. TASEFF:

7 Q. Mr. White, tell us where you slept last night.

8 A. I'm currently now at Delmont.

9 Q. Where is that?

10 A. That's on 1550 North Miami Avenue.

11 Q. How long have you stayed there?

12 A. I've been there currently about a month now.

13 Q. Earlier this year, were you living on the streets homeless?

14 A. Yes.

15 Q. Where were you staying when you were homeless?

16 THE COURT: Where you live now is in an apartment?

17 THE WITNESS: No, I stay at a homeless shelter right  
18 now.

19 THE COURT: Okay. Thank you.

20 All right. Go ahead. I'm sorry. Go ahead.

21 BY MR. TASEFF:

22 Q. Earlier this year, where were you sleeping on the sidewalk?

23 A. I was sleeping on 21st Terrace and Northwest 14th Avenue.

24 Q. In early August of this year, was there an incident where  
25 your property was taken?

1           Is this case going to violate the rule against  
2 perpetuity that I never understood? Okay.

3           THE COURT SECURITY OFFICER: All rise.

4           THE COURT: 2:30. I don't have anything else, so I'm  
5 all yours.

6           (There was a luncheon recess taken at 1:30 p.m.)

7           AFTERNOON SESSION

8           (The following proceedings were held at 2:42 p.m.)

9           THE COURT: You can all sit down if you want. Sorry.  
10          Who is it?

11          MR. TREVISANI: Java Houston, Number 37.

12          THE COURT: 37. Raise your right hand if you don't  
13 mind.

14          JAVA DENISE BROOKS, PLAINTIFFS' WITNESS, SWORN.

15          THE WITNESS: Yes.

16          THE COURT: Have a seat and tell us your name.

17          THE WITNESS: Java Denise Brooks.

18          THE COURT: I'm sorry?

19          THE WITNESS: Java Denise Brooks.

20          DIRECT EXAMINATION

21 BY MR. TREVISANI:

22 Q. I can one question. Was your name recently changed?

23 A. Yes.

24 Q. What was your name before?

25 A. Java Denise Houston.

1 THE COURT: So it's Brooks now?

2 THE WITNESS: Yes.

3 THE COURT: Okay. Go ahead.

4 BY MR. TREVISANI:

5 Q. Were are you living right now?

6 A. I'm homeless.

7 Q. Where do you sleep at night?

8 A. Sometimes on the sidewalk, sometimes in abandoned property.

9 Q. How long have you been homeless?

10 A. On and off, but this time a year.

11 Q. Is that here in the City of Miami?

12 A. Yes.

13 Q. And where were you staying back in April of this year?

14 A. I was on the sidewalk in the City of Miami by the old Macy's  
15 building, Southeast 1st Street and North Miami Avenue.

16 Q. In April of this year, did you have an encounter with the  
17 City of Miami police officers?

18 A. I did.

19 Q. Tell us what happened.

20 A. That night we were over there. I was grouped with other  
21 homeless people and about six officers came. I managed to  
22 videotape them. They asked me to move my stuff and I asked them  
23 were there any shelter or any beds available and they gave me a  
24 little attitude and they were like they're going to arrest me.  
25 They told me, no, they didn't have any beds available, so I

- 1 picked up my stuff and I left from that location.
- 2 Q. Why did you leave from that location?
- 3 A. Because I was told to. I was threatened to be arrested.
- 4 Q. Who told you that?
- 5 A. I believe it was Officer Carter.
- 6 Q. Was he a City of Miami --
- 7 A. One of those, City of Miami.
- 8 Q. How many City of Miami police officers did you encounter
- 9 that night?
- 10 A. Six.
- 11 Q. Okay. And how were your belongings placed on the sidewalk
- 12 at that time?
- 13 A. I normally have my belongings in a bag, normally as a
- 14 pillow, or by my feet alongside me.
- 15 Q. On what part of the sidewalk?
- 16 A. Like horizontal -- I normally lay east. I'm into Feng Shui,
- 17 so I like to lay east, so it's either at my head or my feet of
- 18 my blanket.
- 19 Q. Were your belongings up toward the building or up closer to
- 20 the street?
- 21 A. Toward the building.
- 22 Q. And what time of night was this?
- 23 A. Around 8:00 p.m.
- 24 Q. Again, you said you captured yourself on video of this
- 25 encounter?



1 A. Yes.

2 Q. Was there another time that you encountered some City of  
3 Miami police officers in March?

4 A. Yes, previously I did.

5 Q. Tell us what happened then.

6 A. I was grouped out in the same location because, you know,  
7 there's churches that come and serve food and we were sitting --  
8 I was sitting on a bus bench and they were filming us, which was  
9 kind of rude, and they told us to move. We were sitting on a  
10 bus bench and, you know, again, I was threatened to be arrested,  
11 so I left.

12 Q. Who threatened you?

13 A. I never got the officer's name, but it was an officer with  
14 the City of Miami.

15 Q. And what did he tell you?

16 A. To leave the location.

17 Q. And where were you sitting at that time?

18 A. Southeast 1st Street.

19 Q. But you said --

20 A. On an old bus bench.

21 Q. You were sitting on a bus bench?

22 A. Yes.

23 MR. TREVISANI: I have no further questions. I'm  
24 sorry. I'm sorry, one second, Your Honor.

25 THE COURT: Okay.

1 BY MR. TREVISANI:

2 Q. The incident, the first incident that you described where  
3 the officers came to you, were those officers on bicycles?

4 A. Yes, they were.

5 Q. And about how many officers was it?

6 A. Six.

7 MR. TREVISANI: Thank you. No further questions.

8 THE COURT: Different officers than the other time?

9 THE WITNESS: Yes.

10 THE COURT: But the same number?

11 THE WITNESS: March it was around two.

12 THE COURT: No, the same number of officers? You said  
13 six for the other incident, too.

14 THE WITNESS: In April there were six.

15 THE COURT: And in the other month also six?

16 THE WITNESS: Two.

17 THE COURT: Two, two officers.

18 THE WITNESS: Yes.

19 THE COURT: All right. Go ahead.

20 CROSS-EXAMINATION

21 BY MR. HARRISON:

22 Q. Good afternoon, Ms. Brooks.

23 A. Good afternoon.

24 Q. You took a video on your phone?

25 A. I did.

1 Q. What kind of phone you got?

2 A. A Samsung J3.

3 Q. What is your service provider?

4 A. MetroPCS.

5 THE COURT: I'm sorry, I can't hear.

6 BY MR. HARRISON:

7 Q. What is your service --

8 THE COURT: I can hear you. But not you, ma'am.

9 THE WITNESS: MetroPCS.

10 BY MR. HARRISON:

11 Q. You took a video that we've been provided, but it doesn't  
12 say anything about you being arrested on it. Did I miss  
13 something? Does the video contain something about you being  
14 arrested?

15 A. No.

16 Q. The video has you being directed to leave, does it not?

17 A. Yes.

18 Q. And in fact, you were over by the Metro Beauty Supply store,  
19 you weren't over by the Macy's, you were across the street,  
20 correct?

21 A. I was across the street, but there's no beauty supply place  
22 there.

23 Q. The Churchill's Barber Shop?

24 A. No.

25 Q. Do you know where I'm talking about?

1 A. On the back side on Southeast 1st Street.

2 Q. Right. So you were on the south side of Southeast 1st  
3 Street, were you not?

4 A. Right behind the Macy's building, yes.

5 Q. Okay. Let's not parse words now. You were on south side of  
6 the Southeast 1st Street, right, Southwest 1st Street, correct?

7 A. Yes.

8 Q. The southern side, right?

9 A. The seventh?

10 Q. The southern side, right? That's what you said?

11 A. North Miami Avenue, South Miami Avenue and Southeast 1st  
12 Street, that's where I was located.

13 Q. And you were on the southern side of the street, correct?

14 A. Yes.

15 Q. Okay. Because we know the Macy's, the back of the Macy's is  
16 on the north side of Southeast --

17 MR. TREVISANI: Objection, counsel is testifying.

18 THE COURT: Overruled.

19 MR. HARRISON: I was just going to say correct. Is  
20 that okay? No?

21 THE COURT: Overruled on that basis. Let's go.

22 BY MR. HARRISON:

23 Q. All right. And at some point, you said you were lying down  
24 on the ground already?

25 A. I was preparing to lay down.

1 Q. So you hadn't laid down yet when they just came up to you on  
2 bicycles and said, hey, you got to go, right?

3 A. Yes.

4 Q. And that's when you started filming, right?

5 A. Well, actually I had my blanket laid, everything ready to  
6 lay down and, yeah, that's when they told me to leave.

7 Q. Are you certain where you put your blanket to lay down was  
8 not on private property by the Churchill's?

9 A. I don't know think the sidewalk is a private property.

10 Q. What about the foyer right in front of the store; do you  
11 know whether or not that's absolute private property or public  
12 property?

13 A. I believe it to be public property.

14 Q. But you don't know for certain, correct?

15 A. Well, according to my rights, the sidewalk is a public  
16 property.

17 Q. Okay. And so at some point in time, you were about to lay  
18 down, the cops came up on the bicycles and said, move it along  
19 or we will arrest you?

20 A. Actually, they told me to leave, yes.

21 Q. Okay. And you started doing so?

22 A. I did so.

23 Q. And while you were doing so you kept saying to them, aren't  
24 you going to offer me shelter?

25 A. I asked them properly for a bed.

1 Q. Are you from Miami, ma'am?

2 A. I am.

3 Q. And have you ever been homeless in like, say, Broward  
4 County?

5 A. Broward County? Yes.

6 Q. Okay. When you going in Broward County and you're homeless  
7 and somebody wants you to leave an area, do they have to offer  
8 you shelter?

9 A. Do they have to?

10 Q. Yeah. Do they have to?

11 A. Well, I've been through this whole country and -- I mean if  
12 you go visit California -- I was in California and people, the  
13 tents, it's a homeless crisis in the state of Florida. No one  
14 has to offer me shelter.

15 Q. But in the City of Miami you felt compelled to ask the  
16 police officers, don't you have to offer me shelter?

17 A. Because that's the law, isn't it?

18 Q. Were they arresting you?

19 A. Were they arresting? I have verbal threats and if you would  
20 have viewed the video, he was getting off the bicycle to make an  
21 attempt to arrest me.

22 Q. The video will be in the record.

23 A. Okay.

24 Q. And the Court can see if anybody ever got off a bicycle.

25 Okay?

1 Now, also when you --

2 THE COURT: Is that a question or what is that?

3 BY MR. HARRISON:

4 Q. Isn't that correct, that the Court will be able to look at  
5 the video? Correct?

6 A. Yes.

7 Q. All right. Did there come a point in time where you were  
8 walking away from the officers and you started chuckling into  
9 the phone, I'm going to sue these people, I'm going to get me  
10 some money?

11 A. No. What I said in the phone is I wanted the City of Miami  
12 to know that I have a Uniform Commercial Code and if they would  
13 have put my name on anything or harass me, I would have been  
14 able to bring it before the Court.

15 Q. Okay. Do you believe you were trying to goad the officers?

16 A. No.

17 Q. Do you really have someplace else that you live at, but you  
18 came out in the street to try to do some kind of agitation  
19 propaganda?

20 A. No.

21 Q. So you don't believe that that video could be viewed as a  
22 fake or a hustle or a come on?

23 A. No.

24 MR. HARRISON: Okay. No further questions. Thank you.

25 THE COURT: Thank you, ma'am. You're excused.

1 (The witness was excused.)

2 THE COURT: Next witness.

3 MR. TASEFF: Judge, as we indicated earlier, at a later  
4 time, we'll play the video so that we can get more people in.  
5 Okay?

6 THE COURT: Okay.

7 MR. TASEFF: Thank you, Judge. Derrick Brown, Number  
8 20.

9 THE COURT: Mr. Brown, right over here, please, sir,  
10 your right, my left. Raise your right hand please, sir.

11 DERRICK BROWN, PLAINTIFFS' WITNESS, SWORN.

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. Have a seat and tell us your name,  
14 please. Thank you.

15 THE WITNESS: My name is Derrick Brown.

16 THE COURT: I'm sorry?

17 THE WITNESS: My name is Derrick Brown.

18 THE COURT: Thank you, sir.

19 DIRECT EXAMINATION

20 BY MR. TASEFF:

21 Q. Mr. Brown, where did you sleep last night?

22 A. At the mission.

23 Q. Where is the mission located?

24 A. It's located not far from the School Board station, right  
25 down the street from the School Board station.



1           MR. TASEFF: Well, we appreciate what the City has  
2 offered, to simply withdraw their Motion to Strike his  
3 testimony, allow the record to be corrected that the person who  
4 previously was announced as Barry Alston be corrected to be the  
5 testimony of Wilbert Hill.

6           THE COURT: That Motion to Correct is granted, but it's  
7 separate. The court reporter has to write exactly what was  
8 said. She cannot change it just because I tell her to. She  
9 will not do whatever I tell her because I would never tell her  
10 to do something like that. So now we have in the record,  
11 probably ad nauseam, a clarification of who's who.

12           Thank you, sir.

13           MR. TASEFF: It's Mr. Hill.

14           THE COURT: Thank you, Mr. Hill. Thank you.

15           (Wilbert Hill retired from the courtroom.)

16           MR. TASEFF: Judge, I apologize.

17           THE COURT: That's okay. Let's just go. What's his  
18 number?

19           MR. TASEFF: This is Mr. Alston.

20           THE COURT: Mr. Wilbert Hill was what number?

21           MR. TASEFF: He was Number 74.

22           THE COURT: Mr. Alston, is that your name?

23           THE WITNESS: Yes, that's correct.

24           THE COURT: And he is Number 4. Let's go.

25           **BARRY EUGENE ALSTON, PLAINTIFFS' WITNESS.**

## 1 DIRECT EXAMINATION

2 BY MR. TASEFF:

3 Q. Mr. Alston, do you want to face me a little bit and speak  
4 into the microphone. Okay?

5 A. Yes.

6 Q. Tell us your name, please.

7 A. My name is Barry Eugene Alston.

8 Q. Where do you live right now?

9 A. I live at Chapman's right now.

10 Q. How long have you lived there?

11 A. About a month now.

12 Q. How long did it take to get in there?

13 A. Almost a month.

14 Q. And how is living at the Chapman right now?

15 A. Well, they only give you 60 days, so it's not, you know --  
16 it's okay right now. It's okay.

17 Q. Now, how old are you?

18 A. 56.

19 Q. Earlier this year were you living on the street and  
20 homeless?

21 A. Yes, I were.

22 Q. Do you work?

23 A. No, not at present.

24 Q. Were you working in the past?

25 A. Yes.

1 Q. What kind of work were you doing?

2 A. Well, labor pool off and on, Labor Ready, Labor Pool  
3 Finders.

4 Q. Tell us what that involved, getting work in the labor pool  
5 here in Miami.

6 A. Well, you have to get up real early in the morning and you  
7 have to wait in line and you have to register and then you go  
8 out that morning, if you go out that morning. It's hard work.  
9 It's construction work.

10 Q. How early do you have to get there to get a job at Labor  
11 Ready, the pool --

12 A. You have to --

13 Q. -- on Flagler Street?

14 A. -- be close to 5:00 a.m. to 6:00, 5:00 a.m.

15 Q. Now, Mr. Alston, I'm going to ask you to wait until I'm  
16 through asking my questions before you answer so the court  
17 reporter can take everything down. Okay?

18 A. Yeah

19 Q. All right. Earlier this year when you were living on the  
20 street, where exactly were you living?

21 A. In the 6th Street Northwest, Northwest, back over by  
22 Miami-Dade.

23 Q. Right near the new station, train station?

24 A. Right.

25 Q. How is it that you actually slept there at night? What

1 would you actually do?

2 A. Well, cardboard and blanket and laying on the sidewalk, next  
3 to the sidewalk, behind the building back over this way.

4 Q. Did you have personal property?

5 A. Yes.

6 Q. Where did you keep that personal property?

7 A. Near the fence beside the wall, in the back side.

8 Q. What would you keep your property in?

9 A. A black bag, plastic, and have it in a suitcase.

10 Q. Now, when you got up in the morning to go to work, what  
11 would you do with your personal property?

12 A. I would, you know, keep it sealed, so if it rained or  
13 anything, it wouldn't get destroyed, my property, and I would  
14 have somebody that was there to either watch it or make sure  
15 that it was safe when I got back.

16 Q. When you left for the morning to go to work at the labor  
17 pool, were there other people sleeping there as well?

18 A. Of course. There was a couple of homeless guys sleeping  
19 there that didn't work, that didn't do anything really.

20 Q. Did you have arrangement with them regarding property?

21 A. Yes, I told them that if somebody came, let them know that  
22 it was somebody -- that it belonged to somebody.

23 Q. Now, in August of this year, before you got into the  
24 Chapman, was your property taken?

25 MR. GAMEZ: Leading, objection.

1 THE COURT: Overruled.

2 THE WITNESS: Yeah, when I returned, one of the guys  
3 said there was a sweep, they was cleaning up the area and they  
4 took it. And I asked him, why didn't you tell them it was mine?  
5 And he said, well, I got there a little bit too late. People  
6 had told him, you know --

7 MR. GAMEZ: Objection, hearsay.

8 THE COURT: All right. I don't know what I'm going to  
9 do to get you all to stand up when you make an objection. I  
10 know it's tiring, but since you're not getting a chance to go to  
11 the gym, it's a tradition that has other benefits.

12 MR. GAMEZ: I really apologize, Your Honor.

13 THE COURT: The reason is not just respect for the  
14 Court, forget about that, the court reporter hears you better.  
15 So just stand up.

16 Now let's think about this objection. You're right,  
17 it's hearsay. What did he just say?

18 MR. GAMEZ: I understood that he said that someone had  
19 told him that someone took it.

20 THE COURT: What?

21 MR. GAMEZ: That someone had told him that --

22 THE COURT: What else did he say?

23 MR. GAMEZ: He mentioned that there may have been  
24 someone from the City, but then he said there was someone else.

25 THE COURT: What else did he say? Didn't he say that I

1 wasn't there when it was taken? In other words, he wasn't there  
2 protecting the property. Does that help you or hurt you?

3 MR. GAMEZ: Does it help me? It helps me, Your Honor.

4 THE COURT: And you want me to strike what helps you.

5 MR. GAMEZ: Withdrawn, Your Honor, withdrawn.

6 THE COURT: See? See, it's one of your theories, you  
7 know what? You're telling someone -- you give someone two  
8 bucks, protect my property, and they also go to the bathroom or  
9 get something to eat or you get two dollars worth of protection.  
10 I don't know. It's like cheap insurance, sometimes it doesn't  
11 work out.

12 But you're right, it is hearsay. You're right, they  
13 are leading questions, who took your property. You're right,  
14 but sometimes it doesn't matter I think. But I shouldn't even  
15 be saying anything, but maybe it will make it shorter. I have  
16 failed in that.

17 MR. GAMEZ: Your Honor, we'll withdraw.

18 THE COURT: I know.

19 BY MR. TASEFF:

20 Q. Mr. Alston, what did you lose as a result of your property  
21 being missing?

22 A. I lost my family -- a death certificate, my mom's, and my  
23 birth certificate, and some hygienes and other items, like a  
24 watch and a necklace, and some clothing and stuff like that.

25 Q. Did you lose any medication?

1 A. Yeah, my medication, yes.

2 Q. What was the impact? What was the effect of that?

3 A. I had to try to find out -- the medication is severe, it's  
4 very severe for me, for my health.

5 Q. May I ask what you take the medication for?

6 A. Antiviral, and then I had to go back and try to explain to  
7 my providers what happened to the medicine and --

8 THE COURT: Who are your providers?

9 THE WITNESS: It's Clear Alliance Health.

10 THE COURT: So where are they?

11 THE WITNESS: They are like over on Biscayne, like on  
12 36th Street, it's a clinic. It's a clinic.

13 THE COURT: Did they give your medication?

14 THE WITNESS: Yeah, they gave me another supply.

15 THE COURT: And how long did it take for them to give  
16 it to you?

17 THE WITNESS: It took like close to like several days,  
18 like two weeks, almost two weeks, several days to two weeks.

19 THE COURT: You went there immediately?

20 THE WITNESS: Yeah, I had to.

21 THE COURT: And they didn't give you the medication for  
22 two weeks?

23 THE WITNESS: They had to -- they had to do things --  
24 do my paperwork, they had to go through the channels and make  
25 sure that, you know, that this was happening.

1 THE COURT: That what was happening?

2 THE WITNESS: That the medicine -- when they give you  
3 one bottle of medicine, they've got to make sure that you're not  
4 getting just extra medicine.

5 THE COURT: I know. How did they make sure of that?

6 THE WITNESS: It was the emergency medicine. I'm told  
7 like -- the emergency medicine is for backing up the medicine  
8 that got took.

9 THE COURT: I know, but you said it took two weeks.

10 THE WITNESS: Yeah, two weeks.

11 THE COURT: What did they do during those two weeks,  
12 did they tell you?

13 THE WITNESS: No. Well, it's like when you're taking  
14 the HIV medicine -- I'm going to say it -- when you take the HIV  
15 medicine to keep my viral low --

16 THE COURT: No, I understand why you take the  
17 medication. You go to the clinic and you say, listen, they took  
18 my stuff, including my medication.

19 THE WITNESS: Right, it got took.

20 THE COURT: And you said, they have to make sure that  
21 you're not getting extra medication, right?

22 THE WITNESS: Right.

23 THE COURT: That's what you said. How do they make  
24 sure? They just take your word?

25 THE WITNESS: Yeah. I really don't know how they do



1 it, the insurance companies do it, but they did it for me so --

2 THE COURT: In two weeks.

3 THE WITNESS: They did it for me.

4 THE COURT: They said it's going to take two weeks?

5 THE WITNESS: Well, I got it in two weeks because I  
6 kept going back. I kept complaining about I didn't have no  
7 medicine, no regimens for that month.

8 THE COURT: Okay. All right.

9 MR. TASEFF: No further questions.

10 THE COURT: Cross-examination.

11 MR. GAMEZ: Your Honor, no cross.

12 THE COURT: Thank you, sir. Have a good day.

13 THE WITNESS: Thank you.

14 (The witness was excused.)

15 THE COURT: Next witness.

16 MR. TASEFF: Dennis Sinclair, Number 19.

17 THE COURT: Come forward, please, sir. Raise your  
18 right hand, please, sir.

19 DENNIS SINCLAIR, PLAINTIFFS' WITNESS, SWORN.

20 THE WITNESS: Yes.

21 THE COURT: Have a seat and tell us your name, please.

22 THE WITNESS: My name is Dennis Sinclair.

23 THE COURT: All right.

24 DIRECT EXAMINATION

25 BY MR. TASEFF:

that Defendant failed to pay Plaintiff or otherwise provide consideration for the marketing and promotion. *See* D.E. 11. Accordingly, the Court finds that Plaintiff has failed to state a claim for unjust enrichment. The Court further finds that Plaintiff cannot amend the unjust enrichment claim because, as a matter of law, Plaintiff cannot allege any tangible benefits wrongfully retained by Defendant. If non-payment of accepted orders had occurred, Plaintiff could have, and presumably would have made, that clear in its Amended Complaint.

#### V. Conclusion

For the reasons set out above Defendant's Motion to Dismiss, D.E. 13, is GRANTED. As re-pleading Plaintiff's claims would be futile, they are DISMISSED WITH PREJUDICE.

DONE AND ORDERED in Chambers at Miami, Florida, this 17th day of September, 2018.



**Michael POTTINGER, Peter Carter,  
and Berry Young, Plaintiffs,**

**v.**

**CITY OF MIAMI, Defendant.**

**Case Number: 88-2406-CIV-MORENO**

United States District Court,  
S.D. Florida,  
Miami Division.

Signed 02/15/2019

**Background:** After city and police were found to violate the rights of homeless persons, 810 F.Supp. 1551, a settlement

was reached and consent decree was entered prohibiting arrest of homeless individuals without cause and protecting their property. City moved to terminate consent decree and plaintiffs moved to find city in contempt.

**Holdings:** The District Court, Federico A. Moreno, J., held that:

- (1) city and police department substantially complied with consent decree;
- (2) city departments substantially complied with consent decree; and
- (3) finding of contempt was not warranted. Plaintiffs' motion denied; defendants' motion granted.

#### 1. Federal Civil Procedure ⚡2397.4

District courts are empowered to modify or vacate consent decrees.

#### 2. Federal Civil Procedure ⚡2397.5

A party seeking termination of a consent decree bears the burden to show a significant change in either factual conditions or the law. Fed. R. Civ. P. 60(b)(5).

#### 3. Federal Civil Procedure ⚡2397.5

Consent decrees are not intended to operate in perpetuity and cannot condemn an agency to judicial tutelage for the indefinite future.

#### 4. Federal Civil Procedure ⚡2397.5

To determine whether to terminate a consent decree, a court must first look to the basic purpose of the decree; then, the court must determine whether there is substantial compliance, which means the court must determine whether the parties have complied in good faith with the core purpose of the decree, whether the purposes of the litigation have, to the extent practical, been achieved, and whether it is necessary or sensible, under current circumstances, for the court to continue to exercise judicial oversight.

**5. Federal Civil Procedure** ⚖️2397.1

Federal courts should not be in the business of running important functions of state government for decades at a time pursuant to consent decrees.

**6. Federal Civil Procedure** ⚖️2397.5

City and police department substantially complied with consent decree entered approximately 30 years ago that prohibited arrest of homeless persons without cause and protected the property of homeless persons, as required to terminate consent decree, even though some homeless encampments were cleaned out; primary purpose of consent decree was to prohibit arrests for engaging in life-sustaining conduct misdemeanors, city and community developed variety of programs, including providing \$60 million in funding to shelters and other services, consent decree was preventing city from assisting the chronically homeless, city had implemented training required by consent decree, officers who failed to comply were subject to discipline, and city had policy to document interactions.

**7. Federal Civil Procedure** ⚖️2397.5

City departments substantially complied with consent decree entered approximately 30 years ago that protected the property of homeless persons, as required to terminate consent decree, even though some homeless encampments were cleaned out; while city lacked written procedures on the taking of property, there had been no incidents for 20 years and no complaints about lack of written procedures, large encampments presented sanitation and other health concerns, clean ups were conducted after providing advance notice and securing shelter beds for those in the encampments, they were permitted to take their belongings, and property was discarded due to fears of contamination.

**8. Federal Civil Procedure** ⚖️2397.6**Injunction** ⚖️1716

Injunctions, such as Consent Decrees, are enforced through the civil contempt power of a trial court.

**9. Federal Civil Procedure** ⚖️2397.6

To establish that a party acted in contempt of a consent decree, the party seeking the contempt ruling must show by clear and convincing evidence that: (1) the allegedly violated order was valid and lawful, (2) the order was clear and unambiguous, and (3) the alleged violator had the ability to comply with the order.

**10. Federal Civil Procedure** ⚖️2397.6

If plaintiffs make a prima facie showing of violation of a consent decree for a finding of contempt, the burden shifts to the defendant to show that it has complied with the injunction, or why it should not be adjudged in contempt.

**11. Federal Civil Procedure** ⚖️2397.6

Police telling homeless individuals to move, city taking personal property of homeless individuals during encampment clean-up, and police arresting two homeless individuals for obstructing a sidewalk did not violate consent decree that prohibited arrest of homeless persons without cause and protected the property of homeless persons, as required to find city in contempt; consent decree had general requirement that police not harass the homeless, it did not prohibit police from asking people to move, city had obligation to keep sidewalk clean, allowing individuals to remain on sidewalk while cleaning occurred posed risk to their health, those asked to move were offered clean clothes and blankets, as well as shelter placement, notice was provided to those in encampments prior to clean-ups, consent decree did not prohibit taking of property, but required consistent procedures, which city employ-

ees followed, and items were disposed of due to contamination concerns.

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Benjamin Samuel Waxman, Black Srebnick Kornspan & Stumpf PA, Maria Kayanan, ACLU of Florida, Arthur J. Rosenberg, Florida Legal Services, Kelley S. Roark, Ritter Ritter & Zaretsky, Dante Pasquale Trevisani, Florida Justice Institute, Miami, FL, Robert Elliot Weisberg, Stephen J. Schnably, University of Miami School of Law Professor of Law, Coral Gables, FL, for Plaintiffs.

Carole Patman, pro se.

David Peery, pro se.

Kendall Brindley Coffey, Borgognoni Gutierrez & Arza, Warren Bittner, Miami City Attorney's Office, Scott Allan Cole, Thomas E. Scott, Jr., Cole Scott & Kisan, Miami, FL, for Defendant.

### MEMORANDUM OPINION

FEDERICO A. MORENO, UNITED STATES DISTRICT JUDGE

"[O]ne of the things *Pottinger* has done so well is create this amazing collaboration where it forced the different stakeholders to work together." (Tr. vol. 4, 29).<sup>1</sup> The veracity of Judge Steve Leifman's statement was evident in this proceeding as this Court heard time and again about the myriad of programs and aid available to

the homeless in this community. There can be no doubt that in the twenty years this Consent Decree has been in place, the City of Miami has endeavored to eradicate homelessness. Although Miami has made significant inroads, homelessness unfortunately persists, as it does in all cities in America. Yet, the City continues daily to mitigate the effects in a manner consistent with the *Pottinger* Agreement. The issues in these proceedings are whether the City has substantially complied with the *Pottinger* Consent Decree such that federal court oversight should come to an end after 20 years or whether the City's treatment of the homeless requires this Court to continue its oversight and even to hold the City in contempt.

### I. BACKGROUND

The world has changed dramatically since the original filing of this complaint 30 years ago and the City of Miami is no exception. In 1988, Judge C. Clyde Atkins entered an injunction to prevent the arrest of the homeless for being homeless and the seizure of their property. After 10 years of litigation, a settlement was reached between the homeless Plaintiffs led by Mr. Pottinger and the City of Miami, and the undersigned entered the Consent Decree commonly referred to as the *Pottinger* Agreement.<sup>2</sup>

The 1998 *Pottinger* Agreement was later modified with the agreement of both par-

1. References to the transcripts of the six-day evidentiary hearing are as follows:

Tr. vol. 1 refers to September 24, 2018 transcript

Tr. vol. 2 refers to September 25, 2018 transcript

Tr. vol. 3 refers to September 26, 2018 transcript

Tr. vol. 4 refers to October 24, 2018 transcript

Tr. vol. 5 refers to October 25, 2018 transcript

Tr. vol. 6 refers to November 1, 2018 transcript

2. The original Plaintiffs, Michael Pottinger, Peter Carter, and Berry Young, are deceased or their whereabouts are unknown. On December 23, 2013, the Court granted Plaintiffs' Motion to Add Class Representatives and named Carole Patman and David Peery as class representatives.

ties in 2014 to exclude sexual offenders from the protected class of the homeless. In the twenty years of the *Pottinger* Agreement, the City of Miami police department instituted departmental policies that prohibited the police officers' past practices of arresting the homeless without cause. As a direct consequence of the excellent work done by the attorneys for the American Civil Liberties Union representing the homeless, the *Pottinger* Agreement led to, not only a change in the City's police department, but also contributed to a total cultural change in the way the homeless were treated by all City employees. That cultural change also contributed to the creation of a Miami-Dade County Homeless Trust supported by taxes and grants that yield an annual budget of approximately \$ 61-65 million to assist the homeless in various activities, including medical assistance, shelters, etc. (Tr. vol. 2, 24).

Because of these changed circumstances, the City of Miami seeks termination of the twenty-year old *Pottinger* Agreement. On the other hand, the Plaintiffs not only oppose the termination of the agreement, but they have also moved to hold the City of Miami in contempt for violating the agreement by seizing the property of the homeless in the City's clean-up operations. The City's 2018 clean-up operations were essential because of the health and safety concerns stemming from various homeless encampments.

The Court conducted an evidentiary hearing on the parties' motions over numerous days. The Court will make findings of fact and separate conclusions of law based on the testimony of the City's wit-

nesses, over thirty homeless witnesses, and several expert witnesses in the field of homelessness. The Court is not charged with "resolving" the homeless problem in the City of Miami. However, the Court was impressed with all the services provided to the homeless by many individuals and organizations as a direct consequence of the cultural change engendered by the *Pottinger* Agreement. As such, there is little dispute that the number of homeless has been reduced countywide from 10,000 to around 1,000, although those numbers are imprecise because of the difficulty of counting the homeless. Of those, the overwhelming majority (over 600) are in the City of Miami. According to the U.S. Census, the 2017 population estimate for the City of Miami is 463,347 and the estimate for the County is 2,751,796.<sup>3</sup> Meaning, even though the City's population is only about 17% of the County's overall population, it is home to over 60% of its homeless. Indeed, Mr. Ronald L. Book, Chair of the Homeless Trust, testified that 66% of all homeless individuals placed in shelters come from the City of Miami. (Tr. vol. 2 at 10).

Thus, there is little dispute that Miami has changed, its homeless population has declined by 90%, and the City is the only municipality out of 34 in Miami-Dade County and the County's unincorporated area,<sup>4</sup> subject to the *Pottinger* Agreement. Also, both sides agree that arresting the homeless is never a solution because, apart from the constitutional impediments, it is expensive, not rehabilitating, inhumane, and not the way to deal with the "chronic" homeless, who suffer from mental illnesses

3. See <https://www.census.gov/quickfacts/fact/table/miamicityflorida,miamidadecountyflorida/PST045217>.

4. It is estimated that the population of the County's unincorporated area exceeds one

million residents, approximately 36% of the total population. See <https://www8.miamidade.gov/global/disclaimer/about-miami-dade-county.page>.

and substance abuse addiction. The solution to those problems is beyond the scope of any power given to the judiciary. Yet, the Court does have the power to enforce the parties' agreement and of course, courts always have the power to enforce the United States Constitution to protect individuals from unlawful arrests and seizures of their property.

The dispute in this case is simply the impact that terminating the *Pottinger* Agreement will have on the constitutional rights of the homeless to be free from harassment, arrests, and the unlawful taking of their property. During the last twenty years, so much has changed in how the City of Miami treats its homeless population that the Court finds the *Pottinger* Agreement should indeed be terminated. The changes in the treatment of the homeless are the direct result of the vigorous challenge by the American Civil Liberties Union attorneys on behalf of the homeless in this case.

The Court is under no illusions that the City of Miami has resolved homelessness. But, as homeless expert Judge Steve Leifman, a witness for the Plaintiffs, testified, Miami has become the best city in the country in dealing with the homeless. The health crisis, about which there is no dispute involving drug use, public sex, and rodents in homeless "camps," must be dealt with for the protection of the homeless themselves and the citizens, including children, who live and walk near these gatherings. Any abuse by the authorities is subject to individual civil rights suits. Unattended personal property left on public sidewalks and fences, which pose public health and safety concerns, are allowed to be seized and dispensed by the City. Any arrest not based upon probable cause by the City of Miami police department will subject the police to the same liability

whether the aggrieved party is homeless or has a home.

Therefore, the City of Miami's Motion for Termination is GRANTED, and the Plaintiffs' Motion to Hold the City in Contempt is DENIED.

## II. FINDINGS OF FACT

Twenty years ago, this Court approved a settlement between a class of Plaintiffs, consisting of homeless individuals, and the City of Miami, where the Plaintiffs lived. United States District Judge C. Clyde Atkins found the City of Miami had unconstitutionally arrested homeless persons for engaging in life-sustaining acts they were forced to conduct in public, such as sleeping, cooking, eating, sitting, congregating, and relieving themselves. Judge Atkins found the City "used the arrest process for the ulterior purpose of driving homeless from public areas." *Pottinger v. City of Miami*, 810 F.Supp. 1551, 1566 (S.D. Fla. 1992).

Recognizing the limited role of the Court in fashioning a remedy, Judge Atkins issued a negative injunction that prohibited the City from arresting homeless people for sleeping, eating, lying down, or sitting in two safe zones he established in downtown Miami. The injunction further prohibited City police from destroying personal property belonging to the homeless. The injunction did not prohibit police from arresting homeless persons for criminal acts.

The Settlement Agreement ultimately reached in this case was the product of ten years of litigation, appeals, and extensive mediation. After a hearing, this Court, assigned to the case after Judge Atkins, approved the *Pottinger* Agreement, which has been in place ever since.

As modified in 2014, the Consent Decree details a protocol that governs City of

Miami police interactions with those experiencing homelessness. City police may not approach a homeless individual, who is not committing a crime, unless the approach is to offer services. (Consent Decree, Def. Exh. 1 at 6-8).<sup>5</sup> With certain exceptions, the police may not arrest or threaten to arrest any homeless person for committing “life sustaining conduct misdemeanors,” unless they first offer the individual an available space in a shelter within city limits or within a mile of those limits, and the individual refuses that offer. *Id.* at 6, 8. Upon refusal of available shelter, the homeless individual is subject to arrest if there is probable cause that a crime has been committed. *Id.* The Consent Decree lists the life-sustaining conduct misdemeanors and does not prohibit police from arresting individuals for misdemeanors not on the list. *Id.* at 9-11. Miami police need not offer shelter prior to arresting a homeless individual committing a felony. *Id.* at 12.

The Consent Decree also offers protection for the property of homeless individuals. The Decree requires all City employees to follow procedures for taking custody of personal property and not to destroy personal property reasonably recognizable as belonging to the homeless. *Id.* at 12-13. The Decree does not prevent the City from destroying contaminated property, or property that otherwise poses a health hazard. *Id.* The evidence showed that although the City has routine protocol in place, the City outreach team did not have written procedures in place for the handling of property when the Plaintiffs filed their motion for contempt.<sup>6</sup>

5. The Consent Decree is at D.E. 382. The 2014 Addendum is at D.E. 525-1.

6. After Closing Arguments, the City filed a written Administrative Policy Addressing

In its motion, the City of Miami seeks to terminate the Consent Decree, or at the very least, modify it in four different ways. One proposed modification is to exclude what the City calls the chronically homeless from the purview of the decree. The other proposed modification would permit a shelter space anywhere in Miami-Dade County to be offered in lieu of arrest for a life sustaining conduct misdemeanor, rather than only a shelter within the city limits or within one mile, as is currently the case. The City also proposes two additional modifications, which are to include language prohibiting the storage of a homeless person’s belongings on public property and exempting from the Decree actions taken by the City in cleaning public areas.

In its discretion, the Court held an evidentiary hearing to resolve the disputed issues of fact and to determine whether the City carries its burden to show significant changed circumstances and substantial compliance with the Consent Decree. The inquiry is fact-intensive. The trial court is “vested with broad discretion in granting or denying discovery.” *See King v. Greenblatt*, 149 F.3d 9, 13 (1st Cir. 1998). This Court allowed the parties limited discovery prior to conducting the evidentiary hearing.

#### A. *Summary of Changed Circumstances in the City of Miami since 1998*

The testimony was unequivocal that the *Pottinger* Agreement was a catalyst for all the stakeholders in Miami-Dade County to devise appropriate programs to combat homelessness. It was an “incentive to provide the services for the population.” (Tr.

Treatment of Homeless Property. Because this policy was not introduced at the evidentiary hearing, the Court does not rely on it in ruling on the motions.

vol. 4, 8). Judge Steve Leifman, Associate Administrative Judge of Miami-Dade County's Criminal Division, and the Chair of the Florida Supreme Court Steering Committee on Mental Health and Substance Abuse Courts, testified that "[i]t has been a significant motivator for all the stakeholders to come up with appropriate programs on how to deal with this population, and it has worked." *Id.* at 7. The evidence showed that the numbers of homeless persons in Miami has plummeted. *Id.* The evidence also showed that the "population that we have left on the street is different than what we had when we first started." *Id.* *Pottinger* was not developed to address the mental and substance abuse issues that remain present in our community. It was primarily devised to prevent the police from arresting the homeless in certain circumstances and from unlawfully taking their property. The evidence showed "it has achieved that end." *Id.* at 15. The evidence also showed that the City of Miami is unlikely to revert to those policies given the myriad of programs available to it as a means to aid the homeless. Those programs did not exist when *Pottinger* was filed in 1988. It is true that by the time the Consent Decree was entered, ten years after the litigation began, the wheels were in motion and homeless aid initiatives were beginning to take shape. In the twenty years since, the proliferation of services and funding available in this community has been transformative causing a 90% reduction in the number of homeless. There is also a general consensus of what work remains and how to chip away at those remaining statistics.

#### 1. *Changes in Police Work*

The City began its presentation by calling its Police Chief Jorge Colina, a 28-year

veteran of the force and the chief since January 2018 and James Bernat, an executive officer for the Police Department, and an 11-year veteran with the force. Chief Colina discussed the City's interdepartmental efforts to aid the homeless, including the City's newly formed Department of Human Services. (Tr. vol. 1, 60-61, 94). Both testified regarding the changes in policing since *Pottinger's* inception. Now, every City officer wears a body camera to record engagements with the public and every officer has access to an interactive simulator to teach them how to react in different scenarios. *Id.* at 65-67. Every police vehicle has a computer, where officers can watch training videos and access Departmental Orders, including those orders explaining how to treat the homeless. *Id.* at 68-69. All officers receive training on *Pottinger's* requirements and scenario-based training so they are well-versed in the appropriate treatment of the homeless. *Id.* at 54-55; (Def. Exh. 40).

Chief Colina testified that the department has implemented disciplinary procedures since the *Pottinger* agreement was entered. *Id.* at 61. Any police officer found to have violated the order is subject to discipline, up to and including termination or arrest. *Id.* at 47-48. One incident involving a homeless individual named Java Brooks, is under investigation by the Department's Internal Affairs. *Id.* at 87-88.<sup>7</sup>

Section VIII of the *Pottinger* Agreement requires the City to keep records of police interaction with the homeless. Pursuant to the agreement, officers document every interaction with a homeless individual in the form of a Field Information Card. (Def. Exh. 1 at 9). Departmental Order 11, Chapter 10 requires that these cards be kept on file with the police records unit

7. The Court notes that Java Brooks testified that she had recently changed her name and her prior name was Java Houston. In the

pleadings, the parties use both names interchangeably. (Tr. vol. 3, 151).



like the old library card cataloging system. (Def. Exh. 95, 100). Beyond dispute is that changes in technology, including body cameras and cellular phones, render this requirement of a “card catalogue” archaic and obsolete. The Court observed videotape evidence documenting police interactions with the homeless in this case. (Pl. Exh. 578-37, 39). Although there are many contributing factors, the transparency in police work, caused by technology, surely helped precipitate the sharp decline in arrest statistics relating to homeless individuals. (Tr. vol. 4, 30).

2. *Funding Changes and the Development of the Continuum of Care*

The evidence described the changes in funding efforts in Miami-Dade County since the inception of the *Pottinger* Agreement. Ronald L. Book, the Chairman of the Homeless Trust for the last decade, testified as to the funding efforts to assist the homeless in this community. Prior to serving as the Chair of the Homeless Trust, Mr. Book chaired the finance committee since the Homeless Trust’s creation over 24 years ago. Mr. Book began his work 25 years ago on a legislative effort to pass the food and beverage tax in Miami-Dade County. (Tr. vol. 2, 5-6). The tax was an outgrowth of the Governor’s Commission on Homelessness and part of a 10-year plan to end homelessness in Miami-Dade County. *Id.* The Homeless Trust is the funding source and overseer of the panoply of services for the homeless, known as the continuum of care in Miami-Dade County. *Id.* Twenty-seven members participate on the public board that administers the food and beverage tax dollars, federal and state grants, and other revenue streams. *Id.* The continuum of care was created to provide all the programs and services needed to end homelessness. *Id.* at 7. It starts with the City of Miami’s outreach teams, known as the Green

Shirts, many of whom are formerly homeless individuals themselves. The Green Shirts work on bringing the homeless into the continuum of care, which includes medical care, mental health counseling, substance and alcohol abuse treatment, shelter, and housing. *Id.* at 10.

The City’s outreach efforts are “completely intertwined” with the Homeless Trust. *Id.* at 9. The Trust owns two Homeless Assistance Centers, in its partnership with the Chapman Partnership. *Id.* at 10. The City’s outreach workers bring the homeless individuals (from the City of Miami and other geographic areas) to these centers; the homeless cannot simply walk into a center for assistance. *Id.* The placements in the Chapman Homeless Assistance Centers are 66% derived from the City of Miami. *Id.* In the 24 years since the creation of the Homeless Trust, the County started with over 8,000 street unsheltered homeless individuals, and that number has plummeted to 1,104. *Id.* at 11. Of the roughly 1,000 homeless in the County, approximately 664 are in the City of Miami. *Id.* at 11, 17. Mr. Book testified there has been a 90% reduction in the City of Miami and countywide since the start of the Homeless Trust. *Id.* at 11.

The Department of Housing and Urban Development also provides funding and dictates certain standards and protocols for homeless individuals to access the system. (Tr. vol. 2, 79). The Homeless Trust developed a Coordinated Entry System, which provides a hotline for homeless individuals to call for aid. *Id.* The evidence showed that homeless individuals sometimes have to call the hotline for 30 days or more to get into a shelter. *Id.* at 79-80; (Tr. vol. 3, 50-51). The Camillus House Day Center provides phones for them to call the hotline. (Tr. vol. 2, 80).

The monies generated by the Homeless Trust from the food and beverage tax are used as an elastic band. *Id.* at 13. When the Trust provides funding to the different community-based organizations, such as Camillus House and the Salvation Army, the Trust expects these organizations to use those funds as leverage to obtain additional grants and funds to buy more beds and units of housing. *Id.* Of the funds collected by the Trust, approximately 33 to 34% are generated in the City of Miami, which is the dominant source of food and beverage tax revenues in the County.<sup>8</sup> *Id.* The *Pottinger* Agreement has no impact on the collection of the food and beverage tax. *Id.* at 15.

Camillus House is a key component of the continuum of care. Hilda M. Fernandez, the CEO of Camillus House, a Ministry of St. John of God, testified regarding the organization's work with the homeless in Miami-Dade County. *Id.* at 50. Camillus House operates programs throughout the county serving about 1,100 people daily. *Id.* at 51. Some of the programs include the Lazarus project, which is a program that is a combination of employees from Camillus House and Camillus Health. *Id.* at 52. The medical assistants, a psychiatric nurse practitioner, and the Green Shirts engage the hardest to serve, severely mentally ill chronically homeless, medicate them on the street, and get them sufficiently stable to enter the continuum of care. *Id.* Dr. Edward Suarez, the former director of the Lazarus Project, testified that the idea is to get homeless individuals started on necessary medication and therapy while they await housing. *Id.* at 94-95.

8. The food and beverage tax is not charged in the cities of Miami Beach, Bal Harbour, and Surfside, which charge tourism-related taxes. The City of Miami Beach provides funds to buy beds in the continuum of care and coordi-

Camillus also provides a day center to serve the street homeless, allowing individuals to come in and access showers, clothing, a hot breakfast, and mail service. *Id.* at 52. Camillus operates with a sister agency, Camillus Health Concern, which provides a clinic on the Camillus campus, which provides healthcare services to those that come into the day program. *Id.* at 55. Camillus provides temporary storage while people are accessing services on the Camillus campus. *Id.* at 52. The organization also provides emergency housing, treatment programs, and permanent supported housing. *Id.* at 52-53. In providing all these services, Camillus serves various populations, including unaccompanied homeless youth, victims of human trafficking, and veterans. *Id.*

For the last fifteen years, Camillus has been providing permanent housing, which is known as the Housing First model in the continuum of care. *Id.* This is housing for individuals moving out of homelessness, who do not need intensive support services, and can pay reduced rents to live in facilities owned by Camillus. *Id.* There are on-site clinicians that provide services to individuals in permanent supported housing. *Id.* at 56.

In addition to Camillus House's partnership with the City of Miami on the Lazarus Project, the City has an agreement with Camillus to fund shelter beds and provide support for the Camillus Day Center program. *Id.* at 56-57. The City funds 75 beds, 65 are extended-stay beds, and 10 are 24-hour beds. *Id.* at 59. Former City Commissioner Marc Sarnoff testified that the City provided funding, \$ 10 million dollars, to

nates with the Homeless Trust in that regard. When the City of Miami Beach purchases beds, oftentimes the beds are in the City of Miami. (Tr. vol. 2, 13-15).

aid Camillus House's relocation to its new campus. (Tr. vol. 2, 30).

3. *The Chronically Homeless and Outreach Efforts*

The City's outreach efforts have also changed since the inception of the *Pottinger* Agreement. The record demonstrates agreement among City police and administration that arresting homeless individuals is not an effective remedy since the homeless individuals return to the streets within a short time. The City created outreach operations to move homeless individuals off the streets and into the continuum of care. As of the fall of 2018, the City created a new department called the Department of Human Services. (Tr. vol. 1, 276). The Department includes homeless outreach, a child care center, job training, and employment. *Id.* at 277. Prior to this past fall, the City of Miami's Department of Veterans Affairs and Homeless Services provided outreach to the homeless community.

The City's Green Shirts, the homeless outreach employees, work in the streets of Miami to move the homeless into the continuum of care or to get them social services as needed. Sergio Torres, the Director of the new Department of Human Services, testified that he conducts training sessions for his department, and other City employees, who interact with the homeless, including Parks and Recreation staff and the police department's Neighborhood Enhancement Teams. (Tr. vol. 1, 233-234). David Rosemond, the Assistant Director of Neighborhood Enhancement Teams, oversees the Green Shirts to ensure they are working as a cohesive unit. (Tr. vol. 6, 30). Due to the teams' active engagement with the homeless, the City of Miami has a contract with Miami-Dade County to perform the work countywide. *Id.* at 31. The role of the Green Shirts is to

usher the homeless from the streets and to the agencies that can best provide them services. *Id.* at 32. Many know the homeless individuals by first and last names and know their circumstances. *Id.* at 33. The City provides the Green Shirts with training on how to engage the homeless, how to provide them services, and how to talk to people who find themselves homeless. *Id.* The majority of the Green Shirts are formerly homeless individuals, or individuals in recovery. *Id.* at 34. Some of the Green Shirts have been working in that capacity since the inception of the project in 1992. *Id.* at 35.

The outreach efforts are not always successful as many homeless individuals refuse available shelter. Officer James Bernat testified that many prefer to stay homeless even if they can obtain available shelter due to mental illness, substance abuse issues, and other reasons. Judge Leifman, a witness for the Plaintiffs, also confirmed the change in the type of homeless individuals now versus twenty years ago. Shelters are controlled environments with rules, which many homeless individuals do not want to follow. A majority of the unsheltered homeless population are "chronic homeless," meaning they have been living on the streets for 365 days or more, or they experience four instances of homelessness in a three-year period. (Tr. vol. 2, 17). About 67-69% of the homeless population is chronically homeless. *Id.* This is a population that is shelter-resistant and would benefit from a Housing First program, which is not a shelter facility, but rather an individualized home. *Id.* This population needs to be incentivized to seek housing. Mr. Book testified that allowing street feedings and panhandling, as well as the *Pottinger* agreement, itself, all make it harder to get the chronically homeless into the continuum of care. *Id.* at 17. The County and Jackson Memorial Hospital gave \$ 42 million for the construction of a new

facility on 7<sup>th</sup> Avenue and 22<sup>nd</sup> Street in the City of Miami to help this population. In addition, there is a city-owned property around that facility, and a desire to build thousands of new units of low-income affordable housing for the chronically homeless. (Tr. vol. 4, 25-26).

There is agreement that many chronically homeless suffer from mental illness. In 2000, Judge Leifman convened a summit to address how to better handle mental health issues in the criminal court. (Tr. vol. 4, 2). The summit devised a pre- and post-arrest diversion system. As a result, Miami-Dade County has the largest squad of officers trained in Crisis Intervention Team policing. *Id.* The program provides training for law enforcement that teaches them to identify people in crisis, how to deescalate a situation, how to Baker Act<sup>9</sup> individuals, and where to take them. The programs provide an alternative to arrest. *Id.*

The summit also set up post-arrest diversion programs for people with serious mental illness who get arrested, one for misdemeanants, one for non-violent felonies, and one for competency restoration. *Id.* at 3. The success of those programs is evidenced in the statistics. “[B]etween 2010 and 2017, the City of Miami and Miami-Dade Police Department[s] combined, handled 83,427 mental illness calls and only made 149 arrests.” *Id.* The recidivism rate has dropped from 72 to 20 percent in the misdemeanor program and the felony program has saved the County “about 68 years of jail bed days with a low recidivism rate.” *Id.* The Competency Restoration Alternative Program helps individuals get services as opposed to being sent back to the street without assistance. *Id.* Before these programs started, there

were two shootings per month of people with mental illnesses. *Id.* at 19. Now, there have been five or six in eight years. Police injuries of mentally ill people has almost completely vanished and “out of 5,200 calls in the City of Miami last year there were six arrests.” *Id.* When a mentally ill homeless person winds up in court, the state court calls the Green Shirts to aid the homeless individual. *Id.* at 33.

The Green Shirts are also involved in the University of Miami’s Needle Exchange Program. Dr. Edward Suarez testified that it is Florida’s first and only syringe exchange program. (Tr. vol. 2, 92, 96). As part of his work and due to his training in crisis intervention, Dr. Suarez can Baker Act when he sees an “individual who’s floridly psychotic, responding to internal stimulation . . . hasn’t eaten, hasn’t drank, not taking care of himself, is being a danger to themselves by way of self-neglect . . . to the point of self-harm.” *Id.* at 98. At that point, Dr. Suarez can call a City of Miami Neighborhood Resource Officer to transport the individual to Jackson Crisis, and that individual gets housed. *Id.* at 99. He says that he has a symbiotic relationship with the City of Miami police and to that end, he testified that “whenever [the police or outreach personnel] get into a jam, before they commit anything – whatever, before they put any hands on anybody or anything of that sort, I get a phone call” seeking advice and assistance since he is familiar with many homeless individuals. *Id.*

The objective of the Needle Exchange Program is to test the homeless individuals for HIV and Hepatitis C. When homeless individuals test positively for HIV, Dr. Suarez starts HIV medication that same day. *Id.* at 106. He then goes out to find

9. The Florida Mental Health Act, commonly known as the Baker Act, allows for the involuntary institutionalization and examination of

an individual. Judges, law enforcement, physicians, and mental health professionals can initiate the process. § 394.463, Fla. Stat.

that person in the street, days later, to remind them to refill their medications. *Id.* The City of Miami aids in the process by helping Dr. Suarez locate individuals and place them into shelters.<sup>10</sup> *Id.* at 107, 120. Once the individual is in a shelter, Dr. Suarez can get that person into HIV care, and that person will have a dedicated space to store the HIV medication. *Id.* at 107.

*B. Outreach Efforts and Procedures Regarding Property*

The Consent Decree contains a section titled: “Disposition of Property Belonging to Homeless Person who is arrested.” It states:

The City shall respect the personal property of all homeless people. The Miami Police Department (and all other Departments including but not limited to Parks and Recreation and Solid Waste) shall follow their own internal procedures for taking custody of personal property. In no event, shall any city official or worker destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e. bedding or clothing and other belongings organized or packaged together in a way indicating it has not been abandoned), except as is permissible by law and in accordance with the department’s operating procedure, or if the property is contaminated or otherwise poses a health hazard to City workers or to members of the public.

(Def. Exh. 1 at 12). This section places two requirements on the City departments with regard to property of homeless individuals: (1) all departments must “follow their own internal procedures for taking

custody of personal property,” and (2) no City employee may destroy property belonging to homeless individuals except where permitted by law, or if the property is contaminated. The evidence showed that the City outreach workers follow internal procedures, albeit unwritten ones, for the handling of property. The *Pottinger* Agreement did not require the City to have written procedures for the handling of property. Although a written protocol is preferable and has finally been prepared, it is important to note that in the twenty years that *Pottinger* has been in place there has not been a complaint regarding the handling of property or a lack of written procedures until now.

When an outreach worker assists a homeless individual into a shelter, the worker follows a procedure to deal with the property. (Tr. vol. 1, 248-49, 254). When a homeless individual accepts an offer of shelter from an outreach worker, the outreach team assists him in storing bulkier property that the individual cannot take into a shelter. (Tr. vol. 6, 44). The homeless person entering a shelter takes the belongings he may want to keep, and the outreach worker will itemize the rest of the items on a receipt, which the outreach worker then gives to the homeless individual. *Id.* The outreach worker then takes that property to the City’s storage unit. *Id.* This same protocol would be used when encountering abandoned property in the streets. *Id.* at 46-47. In that situation, the outreach worker will go through the property and separate items of value, including documentation, medication, phones, or pictures. *Id.* The outreach worker itemizes those things and puts them in a bag to take to storage. *Id.* The outreach worker also leaves a note on the

<sup>10</sup> Dr. Suarez testified that Green Shirt Willie Rachel helps him locate these individuals. (Tr.

vol. 2 at 102, 107).

site where the things were located so that the individual knows that his belongings were gathered by the outreach team. *Id.*; (Def. Exh. 28) (photographs of notes on fences). The notice contains an address and phone number where the homeless can retrieve their property. *Id.* The department stores the property as long as there is space, and in reality, has not thrown anything away. (Tr. vol. 6, 48-49). The outreach team patrols those areas for days where the property would be taken in the event someone is looking for his belongings. *Id.* at 46-47. Only one homeless person, Robert Rhodes, testified that he attempted to retrieve his property from the facility, and was unable to do so. (Tr. vol. 3, 17-18).

#### 1. 2018 Clean-Ups

The City outreach workers unquestionably began clean-up efforts in the downtown Miami area in 2018 due to health and sanitation concerns from the homeless encampments. The City Manager Emilio Gonzalez coordinated various city departments to target and clean up hotspots. His direction to clean these areas indicates that the work should be done in accordance with the *Pottinger* Agreement. (Pl. Ex. 601-65). Plaintiffs claim Mr. Gonzalez's directive was the beginning of a coordinated attempt to disperse the homeless from the downtown Miami area and resulted in a violation of constitutional rights. Evidence showed that the City's efforts were, at least in some part, due to complaints it had received from residents. The Plaintiffs rely on an email from Milton Vickers, Special Assistant to the City Manager, to make this point. The text of the email from Milton Vickers to Police Chief Colina reads:

Chief Colina, the Homeless Outreach staff have developed a plan to address homeless encampments and unattended

contaminated items. It is imperative that this be coordinated with police in these locations and be patrolled in the future to ensure that homeless individuals do not return to these locations. The Homeless Outreach staff will be in full compliance with the *Pottinger* Agreement. Please see thread below.

(Pl. Exh. 601-65 at 1); (Tr. vol. 1, 82). The Deputy City Attorney Barnaby Min also wrote an email to other Assistant City Attorneys requesting that they follow-up with Milton Vickers to make sure the clean-ups were *Pottinger* compliant. (Pl. Exh. 601-4). The evidence showed that the City tried to relocate the individuals that were living in the clean-up areas to available shelters and that individuals returned to the spots after the clean-ups. (Tr. vol. 3, 13) (Testimony of Robert Rhodes) (stating he walked down the street with his belongings while the City power washed the street and he returned later that afternoon and slept in the same location that night.). That the City wanted to prevent the squalor and unsanitary conditions from re-manifesting after completing a clean-up is not a *Pottinger* violation. Rather, the clean-up efforts inure to the benefit of the homeless sleeping on the sidewalks. Overall, the evidence showed the City was working to clean the streets for the public welfare, while also meeting its *Pottinger* obligations.

On September 19, 2018, the Florida Department of Health notified the City of a specific area of concern located between 13<sup>th</sup> and 14<sup>th</sup> Streets and between NW 1<sup>st</sup> and 2<sup>nd</sup> Avenues in Overtown, a neighborhood in Miami north of the downtown area. The Department indicated that these areas were a significant public health concern and were being investigated. (D.E. 658-1).<sup>11</sup> The clean-up had to be handled with

11. The City filed a motion for judicial notice

of the Florida Department of Health letter.

the assistance of a specialized biohazard waste clean-up crew. Video evidence showed human feces, rats, and contaminated items in the area. Judge Leifman testified that he observed this site under the expressway overpass, in the Overtown section of Miami, which he described as a public health crisis. (Tr. vol. 4, 12). “It was like a horror movie. There were a lot of women using right in front of us. There were needles hanging out of different parts of their body. Many were collapsed lying on the street half naked. There were rats running around, there were needles everywhere. It was an opioid den . . . There was a big concern that if we disturbed the site too quickly those illnesses would spread.” *Id.* Judge Leifman testified that a young boy was walking through the area on his way to school and got his hands on fentanyl and died. *Id.* at 21. Despite the gravity of the situation, there was not one arrest. *Id.* at 15, 20. With regards to this site, Judge Leifman testified that 30 people were moved into treatment within a week and property was appropriately taken. He did not witness City officials seizing and destroying personal property. *Id.* at 20. He noted that from what he observed, however, that mattresses and whatever else was being used for sleep were not fit for human use. *Id.* Dr. Suarez was also involved in this clean-up of this Overtown site. (Tr. vol. 2, 110). Once it was clear that there was an HIV network, Dr. Suarez stated that City workers understood that the homeless individuals in this area could not be dispersed and that when the appropriate time came, they would work to get the people into shelters. *Id.* at 111.

The City protocol for executing the clean-ups includes posting notices at least

seven days prior to the clean-up. (Tr. vol. 1, 235-36; 216-17); (Tr. vol. 2, 65). In the two weeks leading up to a clean-up, the City outreach workers would provide increased efforts to place the individuals living in certain areas of downtown in available shelters. *Id.*; (Tr. vol. 6, 43). Camillus House ensures there are beds available when the outreach teams identify areas for clean-ups. (Tr. vol. 2, 64). The evidence showed there is daily engagement, which means that the outreach teams go out daily at different times to offer individuals placement opportunities as often as possible before the clean-up.<sup>12</sup> (Tr. vol. 2, 65-66); (Tr. vol. 6, 43-45). Much like the City’s general protocol for handling property, the outreach workers followed the same procedure during clean-ups. If the outreach workers identify anything important – such as identification cards or medications – they inventory and store the property. They discard contaminated property. (Tr. vol. 1, 248-49). The outreach workers leave a notice for property they take to storage or discard. (Tr. vol. 2, 65); (Def. Exh. 28). The Plaintiffs dispute that these notes were left and argue there was no guarantee that the owner of the property would receive these notes. The evidence showed a few examples where the handwritten notes were placed on a fence, such that they would not easily blow away. The handwritten notes provided an address where the City took the unattended personal property. *Id.*

Dr. Edward Suarez testified about the clean-ups stating that the team comes with “engagement tools: bottles of water, food, blankets. We do not go in there with the idea of . . . dispersing or kicking people out because that doesn’t help. That just

The Plaintiff did not oppose the request as to this particular document and the motion is granted as to this document.

12. Clean-ups are also referred to as encampment closures on the record. (Tr. vol. 2, 64).

spreads the problem across the city, and we use engagement tools to build rapport. So the clean-up is really rapport building.” (Tr. vol. 2, 103). Dr. Suarez explained that he shows up with the City employees to perform the clean-up and they ask the individuals to move. They offer them clean clothes. While the clean-up is going on, the individuals are offered detox at Banyan Behavioral or shelter beds. They work with Camillus and the Homeless Trust to ensure there are shelter beds available during a clean-up. *Id.* at 104-105. He also testified that they ask individuals to “move for a little bit until we clean everything, and they’re more than welcome to come back to that spot.” *Id.*

Plaintiffs presented the testimony of over thirty homeless individuals, including the class representative David Peery. Cumulatively, the homeless witnesses testified about what occurred during the clean-ups.<sup>13</sup> The Plaintiffs presented testimony that the clean-ups in the Lot 16 area would start very early in the morning. That appears reasonable so as not to impede both vehicular and pedestrian traffic, which increases tremendously as thousands of employees come to work before 8:00 a.m. The homeless witnesses testified that officers and Green Shirts would sound loud noises, shine bright lights, and request the homeless, who are sleeping on the sidewalks, move so that they could pressure clean the sidewalks. (Tr. vol. 3, 12, 42, 76). Officer Jose Galvez, who works with the City’s Neighborhood Enhancement Team, testified regarding the clean-ups. As a neighborhood resource officer, he goes to com-

munity meetings to address issues in the downtown Miami area. (Tr. vol. 1, 203). Officer Galvez testified that the City starts the clean-ups early in the morning before 8 a.m. *Id.* at 204. The Neighborhood Solid waste teams drive trucks to collect bulky items in the streets or on the curb. *Id.* at 207.

The manner that the City handled personal property during the clean-ups is vehemently contested in this proceeding. When property is found, the Neighborhood Solid Waste team will take contaminated unattended property, such as cans, food, or soiled sheets. *Id.* at 210. Officer Galvez said the team does not discard abandoned bookbags, which he says are left in the middle of everything. *Id.* In video footage, the Court observed the officers placing sheets and mattresses, and trash bags in a pile to be discarded. Again, such actions appear reasonable due to the evidence of contamination and the spread of diseases. However, unattended bicycles, which pose no such health risk, were left by the clean-up crews on the street. Officer Galvez testified about the need to pressure wash the street on 1st Street and Southwest 2nd Avenue, because of the amount of human feces, urine, and contaminated sheets in the area. *Id.* at 213. During the pressure washing, the homeless were asked to move, even if they were sleeping, and many went across the street to an empty parking lot. *Id.* at 214. They were again offered available shelter, which is corroborated by the testimony of Hilda Fernandez, who testified that Camillus House sets aside beds during clean-ups so that the

13. There are a few areas where the clean-ups occurred: 1) the downtown area known as Lot 16, a municipal parking lot east of the Miami River under the I-95 underpass, bounded by the Miami River on the east, S.W. 1<sup>st</sup> Street on the north, and S.W. 3<sup>rd</sup> Street on the south; 2) Overtown area under the I-395 overpass on N.W. 11<sup>th</sup> and 13<sup>th</sup> streets between

N.W. 1<sup>st</sup> and 2<sup>nd</sup> Avenues; 3) the downtown area by the old Macy’s on Flagler street; 4) N.W. 6<sup>th</sup> street by the new Brightline station and one block from this courthouse; 4) the downtown area by Government Center across the street from this courthouse; and 5) Peacock Park in Coconut Grove.



affected individuals would have a place to go. Dr. Suarez also testified that affected individuals were offered an opportunity to go to a detox facility. (Tr. vol. 2, 64, 105). The Neighborhood Solid Waste team discarded whatever property the homeless no longer wanted to keep and would provide bags so they could carry their personal belongings. (Tr. vol. 1, 215-216). Officer Galvez corroborated that notice would be posted for a clean-up, although he did not do it himself. *Id.* at 216-17, 219; (Tr. vol. 3, 89) (homeless individual testifying that “there were signs up saying that they were going to be cleaning.”).

Almost all the homeless witnesses testified that they saw City workers take property. A few testified that they personally witnessed either their own or other people’s property being seized. Several witnesses testified generally that they had witnessed City of Miami employees throwing unattended property into trucks. (Tr. vol. 5, 18). For the most part, the testimony was that property was kicked around, thrown into piles, and then loaded into trucks when the homeless were not present, even if they had left their belongings neatly by the side of the fence or in a manner that did not obstruct the sidewalks. *Id.*; (Tr. vol. 3, 90). Some said they asked the City for their property back, but that their requests were denied. *Id.* at 263-64. Plaintiffs testified to losing small items, such as identifications, medicine, eye glasses, cellular phones, personal notes from family members, and photographs. *Id.* at 52-57, 83, 90-91, 113, 263. Various homeless persons, who lost their property, testified that they had left items in either a backpack, bag, or suitcase and positioned them out of the way. *Id.* at 44, 193, 222. Some claim that police and City workers did not allow homeless people to retrieve and save the property of another from disposal during a clean-up operation. *Id.* at 76. For example, Eli Halter, a Marine veteran,

testified, if you were not there, your property went into a pickup truck. *Id.* at 76; (Tr. vol. 4, 18). Robert Rhodes, however, testified that he was able to grab the belongings of his neighbor, who slept next to him on the street and left shortly before the clean-up. (Tr. vol. 3, 15). Obviously, there is no excuse for the taking of identification cards, medicine, eye glasses, cellular phones, or photos, as they, by themselves, do not present a health hazard. The dilemma is what to do with those items if they are commingled with backpacks, mattresses, sheets, food, etc. that clearly pose health and security concerns. The solution to this dilemma is that these individuals should never abandon their identifications, prescriptions, eye glasses, or phones that are so important. Rather, they should keep those items with them when they are on the move.

Class representative, David Peery, testified as to an incident involving another witness, Wilbur Cauley, which was partially recorded on a video. (Tr. vol. 5, 35-36); (Pl. Exh. 578-40-A). This incident occurred during a clean-up in the area of concern flagged by the Florida Department of Health in Overtown. Mr. Cauley’s property was up against a fence, neatly bundled. Plaintiffs introduced a photograph of the property, which showed its position and contents, including a personal bag. (Pl. Ex. 578-41-A). While Mr. Cauley went to a nearby store and left his property, a City worker kicked his property and then moved it from its position against the fence into a pile with other property. (Tr. vol. 3, 88-89); (Pl. Ex. 578-40A). When Mr. Cauley returned to the scene and saw his property in the pile, the City worker did not allow Mr. Cauley to retrieve his property. *Id.* The Court agrees with the City’s position that given the “horror movie” conditions of squalor as described by Judge Leifman at this location, it would have

been eminently difficult to discern contaminated property from sanitary property in this area.

*C. Orders to Move*

Plaintiffs focus on orders to homeless individuals to “move on” by members of the City of Miami Police Department. The Court agrees with the City that orders to move during clean-up operations are essential to the public welfare and do not violate *Pottinger*. The evidence that the City roused the homeless from slumber in the early mornings did not indicate the City workers intended to harass the homeless. Rather than harassment, the intent was to clear the areas where the homeless spent the night before the arrival of vehicle and pedestrian traffic that is typical of most cities. The Court finds the testimony of Dr. Suarez, who is not a City employee, credible as to how he observed the City workers treat homeless individuals to achieve the goals of the large-scale cleaning of public areas. (Tr. vol. 2, 109) (“I’ve never seen them do any of these types of things they’re being accused of. I’ve only seen them do it with dignity and respect. . . .”).

Putting aside the clean-up operations, Plaintiffs also provided evidence of instances where police ordered homeless individuals to move. The Court viewed a video taken by Java Brooks, whom police asked to move from the area by the old Macy’s in downtown Miami. (Pl. Exh. 578-39). This incident is admittedly under investigation by the City of Miami Police Internal Affairs to determine if discipline is warranted. (Tr. vol. 1, 88). Rafael Villalonga’s incident was another, where he was asked to move from his area on Lot 16. Villalonga testified that he complied with the request. There is no evidence that he was threatened with arrest. (Tr. vol. 5, 8-9). Guthrie Chibanguza testified that he

was ordered by the police to leave a bus stop, and he went across the street by a FedEx office. (Tr. vol. 3, 96). Willie Richardson testified that police made him get up and move. (Tr. vol. 3, 101-102). The Consent Decree, however, specifically prohibited arrests, and did not specifically prevent officers from asking the homeless to temporarily relocate. Plaintiffs conceded at closing argument that the Consent Decree does not explicitly prohibit officers from ordering homeless individuals to move under certain circumstances. Plaintiffs, however, argue the orders to move violated their constitutional rights because the order was meant to disperse them from particular locations. There was no evidence that upon returning to a particular location after moving, or after a clean-up, that arrests were made.

*D. Arrests of Chetwyn Archer and Tabitha Bass*

At the heart of the *Pottinger* agreement is the criminalization of homelessness. To that end, the Consent Decree does not permit City police to arrest homeless individuals engaged in life-sustaining misdemeanors without offering them available shelter. Plaintiffs presented evidence of two arrests made simultaneously of Chetwyn Archer and Tabitha Bass, neither of whom testified in this evidentiary hearing. Police arrested the two individuals for the misdemeanor of obstructing the sidewalk. (Pl. Exh. 578-37, 578-38) (police identified a crack pipe at the scene, but the arrests did not appear to be drug-related). Under the 2014 modification to the Consent Decree, “obstructing passage on sidewalks” is excepted from the list of “life sustaining misdemeanor conduct” if the entire sidewalk is obstructed and the police has given the individual a prior warning about the situation. The body camera of Officer C. Gonzalez captured the arrests, however, the video did not show what tran-

spired beforehand. The video begins as the arrest of Chetwyn Archer is being initiated. The video shows a mattress obstructing the sidewalk and no passageway for pedestrians. The individuals' belongings, including garbage bags, a shopping cart filled with clothing and blankets, and a bicycle obstruct the passageway.

The issues for the Court in these proceedings are whether the City of Miami has substantially complied with the purpose of the Consent Decree, such that federal oversight should end, or whether the Plaintiffs have met their burden to show the City should be found in civil contempt.

### III. CONCLUSIONS OF LAW

[1] District courts are empowered to modify or vacate consent decrees. *Horne v. Flores*, 557 U.S. 433, 447, 129 S.Ct. 2579, 174 L.Ed.2d 406 (2009). The City argues that absent systemic violations of 42 U.S.C. § 1983 and in light of policy and practice changes concerning the homeless, continued enforcement of the *Pottinger* Consent Decree is inequitable. Plaintiffs argue the City continues to violate the terms of the Decree.

#### A. Termination of the Consent Decree

[2,3] A party seeking termination of a consent decree bears the burden to show "a significant change in either factual conditions or the law." *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992) (relying on Fed. R. Civ. P. 60(b)(5)). The Supreme Court has acknowledged that consent decrees "are not intended to operate in perpetuity" and cannot condemn an agency to "judicial tutelage for the indefinite future." *Bd. of Educ. of Oklahoma City Pub. Sch. v. Dowell*, 498 U.S. 237, 249, 111 S.Ct. 630, 112 L.Ed.2d 715 (1991) (school desegregation).

[4] To determine whether to terminate a consent decree, the Court must first look to the basic purpose of the decree. *United States v. City of Miami*, 2 F.3d 1497, 1504 (11th Cir. 1993) (citing *Dowell*). Then, the Court must determine whether there is "substantial compliance." That means the Court must determine whether the City of Miami has complied in good faith with the core purpose of the decree, whether the purposes of the litigation have, to the extent practical, been achieved, and whether it is necessary or sensible, under current circumstances, for the Court to continue to exercise judicial oversight. *Id.*, 2 F.3d at 1508 (consent decree addressed underrepresentation of women and minorities in City's workforce).

[5] The Eleventh Circuit provided additional guidance when it stated that district courts should terminate consent decrees when the system had "undergone radical changes and was on secure footing to continue its progress in the years to come, without court supervision," notwithstanding the fact that the system is "not yet perfect and may never be." *R.C. v. Walley*, 270 F. App'x 989, 992 (11th Cir. 2008). In so doing, this Court may rely on the state's "history of good faith and its present commitment to remedying remaining problems." *Id.* "Federal courts should not be in the business of running important functions of state government for decades at a time." *Id.* (quoting *Reynolds v. McInnes*, 338 F.3d 1201, 1219 (11th Cir. 2003)). If this Court determines that the City has implemented a durable remedy, continued enforcement is improper. *Horne*, 557 U.S. at 450, 129 S.Ct. 2579 (stating that federal court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate federal law).

Federalism concerns also exist in institutional reform litigation, such as this,

where core areas of state responsibility are involved. *Horne*, 557 U.S. at 448, 129 S.Ct. 2579. The Supreme Court has acknowledged that “injunctions issued in such cases often remain in force for many years, and the passage of time frequently brings about changed circumstances . . . that warrant reexamination of the original judgment.” *Id.* at 447-48, 129 S.Ct. 2579. The Supreme Court has also noted that “the dynamics of institutional reform litigation differ from those of other cases,” where, “public officials sometimes consent to, or refrain from vigorously opposing, decrees that go well beyond what is required by federal law.” *Id.* “Injunctions of this sort bind state and local officials to the policy preferences of their predecessors and may thereby improperly deprive future officials of their designated legislative and executive powers.” *Id.* at 449, 129 S.Ct. 2579.

It is well beyond dispute that there have been changed circumstances since the start of *Pottinger*. As detailed, *supra*, changes in police work, technology, and most importantly the implementation of a dedicated source of funding to the tune of \$ 60 million dollars a year to aid the homeless in this community sufficiently establish that the conditions in place when *Pottinger* was filed 30 years ago, and even when the Consent Decree was entered in 1998, are no longer the case. The evidence showed that the continuum of care available to homeless individuals in Miami-Dade County is unparalleled in the United States. And, the numbers prove it. The

amount of homeless individuals in Miami has plummeted 90% since *Pottinger* was entered. The number of arrests has also decreased as explained by Judge Leifman.

The dispute in this case centers on whether the City has substantially complied with the core purpose of the *Pottinger* Agreement, and the Plaintiffs claim that the City has not due to its actions in cleaning up homeless encampments starting in 2018.<sup>14</sup> There is no question after hearing the testimony and viewing the video evidence that the City was compelled by the gravity of the unsanitary and unhygienic conditions to literally clean the streets for the betterment of the common welfare, including the homeless, the City’s residents, and its businesses.

#### 1. Substantial Compliance by the Police Department

[6] There can be no doubt that the core purpose of *Pottinger* was to stop the criminalization of homelessness. The primary goal of this litigation and the Consent Decree was to prohibit the City of Miami Police Department from arresting homeless individuals for engaging in life-sustaining conduct misdemeanors.<sup>15</sup> Because *Pottinger* prohibited arrest as a solution to get the homeless off the streets, the City and the community, at large, developed a myriad of programs that City Police could tap into when interacting with the homeless. The County’s Homeless

14. Plaintiffs have not previously filed a motion to enforce the agreement or to hold the City in contempt. Plaintiffs’ counsel likened the situation to a probation violation that occurs after sometime, but is still punishable.

15. In fact, the class certified by Judge Atkins includes “homeless persons . . . who have been, expect to be, or will be arrested, harassed, or otherwise interfered with by members of the City of Miami Police Department for engaging in the ordinary and essential

activities of daily living in public due to the lack of other adequate alternatives.” *Pottinger v. City of Miami*, 720 F.Supp. 955, 959 (S.D. Fla. 1989). The Consent Decree focuses almost entirely on the implementation of training, policies and procedures to ensure that the police department engaged with the homeless population in a humane manner and within the bounds of the constitution. (Def. Exh. 1).

Trust, the recipient of \$ 60 million in tax revenue a year, provides funding and Camillus House, the Chapman Partnership, and Lotus House provide shelter, medical care, and other services to the homeless in our community. The state court system, through Judge Leifman, developed diversion programs to avoid putting the mentally ill in jails. The whole system, described *supra*, and known as the continuum of care has provided an outstanding support network for the City police and other outreach workers. There can be no doubt that the primary purpose of the agreement, to stop the arrests of the homeless for being homeless, has been achieved. The Court finds that the continuum of care is exactly the type of durable remedy that requires this Court to cease its oversight of these primarily state functions. This is not to say that more cannot be done to achieve the goal of eradicating homelessness. The goal of the Consent Decree, however, was not to solve homelessness. Rather, the goal of the Consent Decree was to reform the manner that City Police treated the homeless. That goal has been achieved to the credit of all the individuals, particularly in this litigation.

Plaintiffs' evidence, in this case, of two arrests that purportedly violated *Pottinger* is insufficient to convince this Court that a durable remedy is not in place. The overwhelming evidence supports the finding that City police will not revert to arresting individuals, because they have an ample support network to turn to in handling difficult situations. (Testimony of Ronald L. Book) (Tr. vol. 2, 18) ("[T]he City clearly understands the need to treat the homeless population with respect and with dignity and with a desire to put a permanent end to it and that is our goal and I think that's our joint goal. I don't see that changing should *Pottinger* be discontinued.").

The evidence also showed that for those chronically homeless individuals, *Pottinger*, serves as a crutch enabling them to avoid entering the continuum of care. The video of Java Brooks was emblematic of this where she basically flaunted the City police, who ordered her to move, when she said she was aware of her rights. She showed little incentive to try to get off the streets. The testimony of Ronald Book, Chairman of the Homeless Trust, exemplified this point, when he was discussing the chronically homeless population. He said the chronically homeless are "shelter resistant . . . if you make it easier for them to be on the streets, they're not coming in. It's why we don't support street feedings. It's why we don't support panhandling. I believe *Pottinger* at this point, my opinion, is that continuation doesn't make it easier for us, it makes it harder for us to finish what's out there because it's chronic." *Id.* at 17. Likewise, *Pottinger* has a chilling effect on an officer's ability to provide aid to the homeless. Dr. Suarez said it best, when he said "it's just sad to see that we're still stuck in the past and I see the officers are handcuffed by this. And I think that might be why subconsciously I brought up that young officer saying 'I'm going to be on YouTube by the end of the day.' I think that's *Pottinger* . . . getting in her way of doing the right thing because she is afraid for herself, and I can't blame her for that." (Tr. vol.2, 116).

Not only has the City substantially complied with the main purpose of *Pottinger* regarding arrests, the City Police Department has implemented the required training as set forth in section IV of the Consent Decree, which nowadays includes scenario based training. (Def. Exh. 95, 95A). The City also complies with its departmental orders and police officers, who fail to comply, are subject to investigation by Internal Affairs and discipline. The Departmental Order is modeled

after the protocol in Section VII of the settlement agreement.

The Departmental Order also contains specific directives as to how the police should handle property. While the Plaintiffs' evidence regarding the loss of property during clean-ups often reflected a police presence, there was no evidence that any City of Miami police destroyed or seized property and there are no internal affairs investigations on the record in this regard.

Finally, the police implemented a system to document interactions with the homeless known as Field Information Cards, which are used in cases where there is no arrest. Those forms are maintained by the police as required by Section VIII of the Settlement Agreement. Technology has certainly rendered this requirement obsolete.

The question that remains is whether the evidence of police ordering homeless individuals to move negates a finding of substantial compliance. Java Brooks and Rafael Villalonga testified that the City Police told them to move from where they were staying at night, without cause and without offering shelter. Likewise, Guthrie Chibanguza testified that he was asked to leave a bus stop, even though he had a bus pass, and he walked across the street. Willie Richardson testified that police also ordered him to move. Plaintiffs cite *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999) to argue that the directive to move violates the homeless person's fundamental right to travel. In *City of Chicago*, the Supreme Court held that an ordinance violates the due process clause of the Fourteenth Amendment where it prohibited street gang members from loitering in a public place. To enforce the ordinance, the officers could order the gang members to disperse, and a failure to

comply would be grounds for arrest. *Id.*, 527 U.S. at 50, 119 S.Ct. 1849. The Supreme Court found the ordinance unconstitutionally vague as to what conduct was proscribed. *Id.* at 53, 119 S.Ct. 1849. In so holding, the Supreme Court stated that "freedom to loiter for innocent purposes is part of the 'liberty' protected by the Due Process Clause of the Fourteenth Amendment." *Id.*

Plaintiffs, however, do not lose their constitutional rights by termination of the Consent Decree. It bears noting that no other municipality in Miami-Dade County's 34 is subject to the *Pottinger* Agreement except for the City of Miami. And, individuals in Miami-Dade County are not gaining greater constitutional protections when they cross from Miami Beach into Miami. The issue here is whether there has been substantial compliance with the tenets of the Consent Decree. The basic tenets of the Consent Decree prohibit "arrest or detention" of homeless individuals not engaged in any criminal activity. Neither took place here. The Court does not find the evidence of these four instances where individuals were ordered to move negates a finding of substantial compliance. Substantial compliance "impl[ies] something less than a strict and literal compliance with the contract provisions but fundamentally it means that the deviation is unintentional and so minor or trivial as not 'substantially to defeat the object which the parties intend to accomplish.'" *Wells Benz, Inc. v. U.S. for Use of Mercury Elec. Co.*, 333 F.2d 89, 92 (9th Cir. 1964) (citations omitted). The alleged actions of a few police officers do not constitute the type of deviation necessary to find a lack of substantial compliance, especially where there is no evidence of arrest and the circumstances under which the police issued the directives to move are unclear.<sup>16</sup>

16. Indeed, Chief Colina testified that the City

was investigating the instance with Java

2. *Substantial Compliance by other City Departments*

[7] This institutional reform litigation sought to revamp police interactions with the City's homeless population. Its effects, however, are seen throughout the City of Miami's government departments. There are three sentences in the Settlement Agreement that address property of homeless individuals and are written so as to encompass other City departments, in addition to the police. That provision, *supra*, requires City departments to respect the property of the homeless and to follow their own internal procedures for taking custody of property. It also prohibits city departments from destroying property except as allowed by law, or where the property is contaminated or poses a health risk. (Def. Exh. 1 at 12-13). Plaintiffs argue that the City's failure to have written procedures equates with noncompliance. The agreement, however, functioned for twenty years without incident and at no time did the Plaintiffs complain about a lack of written procedures. The testimony from the City outreach managers, Sergio Torres and David Rosemond, was consistent on the procedures the City workers employ to determine when and how to take property. The testimony also showed that the Department of Veterans Affairs and Homeless Services, now the Department of Human Services, trains the other relevant City departments, such as the Parks and Recreation Department, on the procedures. (Def. Ex. 39). With respect to section VII(F) of the Consent Decree, the Court finds the City in substantial compliance.

Plaintiffs presented testimony of many homeless individuals regarding the taking of property during the 2018 clean-up operations that took place in Downtown Miami and Overtown. There is no question that

the City exercised a valid governmental power in addressing the sanitation and public health concerns created by the large encampments of homeless congregating and living in certain areas of the City. Plaintiffs argue the City's actions during those clean-ups negate a finding of substantial compliance.

The City presented ample evidence that notice was given in advance of the clean-ups and that shelter beds were secured to move people from those areas into the continuum of care. The City's evidence was corroborated by Dr. Suarez and Hilda Fernandez, who both testified regarding their joint efforts and work with the City in performing the clean-ups. The testimony of the homeless witnesses was that if they left their belongings unattended, they were gone when they returned. Some witnesses testified that they asked the City workers to recover their belongings, but were denied those requests. Other witnesses, such as Robert Rhodes, testified that he was able to grab his neighbor's belongings during a clean-up. One witness, Eli Halter, testified that if you were at the clean-up, you had the ability to move your stuff. (Tr. vol. 3, 76). This testimony is consistent with the information provided by Dr. Suarez, Sergio Torres, and David Rosemond regarding clean-up operations.

Plaintiffs emphasize that the incident involving Wilbur Cauley's property shows the City's noncompliance with the Consent Decree. The incident described by Wilbur Cauley and David Peery, and shown in a video (D.E. 578-40-A), took place in the area in Overtown underneath the I-395 overpass. Judge Leifman described that area saying "[i]t was dangerous to put anything on the ground. You had to step around the needles and the rats that were all over the place." (Tr. vol. 4, 34). The

Brooks to determine whether the City would

discipline the police officer for his actions.

evidence showed the unsanitary conditions in that location, and it is not difficult to extrapolate the potential consequences to the public health, which would lead a City worker to discard more property than not, because he believed it to be contaminated. The squalor present prevented the clean-ups from being easy operations where the City workers could examine items one by one. Unfortunately, some medications, identifications, and personal notes were necessarily discarded in the process and the Court sympathizes with that loss, but the Court cannot ignore that those items were commingled with food, soiled materials, and garbage creating a public health crisis. The Court noted that the bicycles present were not discarded, presumably because a bicycle does not pose a health or safety risk. The testimony of Ronald L. Book exemplifies the contents of the evidence. He said: “Nobody is ever going to accuse me of being anything other than compassionate and understanding as it relates to the plight of those who live on our streets, but oftentimes you end up in situations where there’s been hoarding and it’s more garbage than it is property of value.” (Tr. vol. 2, 21). Therefore, the Court concludes the City has substantially complied with the Consent Decree’s property provisions, even though there were instances during the clean-ups where City workers mistakenly discarded valuable items due to the gravity of the unsanitary conditions.

#### B. Motion for Contempt

[8–10] Injunctions, such as Consent Decrees, are enforced through the civil contempt power of the trial court. *Reynolds v. G.M. Roberts*, 207 F.3d 1288, 1298 (11th Cir. 2000). Plaintiffs bear the burden of proving by clear and convincing evidence that the City violated the *Pottinger* Consent Decree. See *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1296 (11th Cir. 2002) (“A finding of civil contempt - willful

disregard of the authority of the court – must be supported by clear and convincing evidence.”). To establish that a party acted in contempt, the party seeking the contempt ruling must show by clear and convincing evidence that: (1) the allegedly violated order was valid and lawful, (2) the order was clear and unambiguous, and (3) the alleged violator had the ability to comply with the order. *Id.*; *Wyatt v. Rogers*, 92 F.3d 1074, 1078 n.8 (11th Cir. 1996). If the Plaintiffs do so, the burden shifts to the Defendant to show that it has complied with the injunction, or why it should not be adjudged in contempt. *Reynolds*, 207 F.3d at 1298.

[11] Plaintiffs presented evidence of three different types of alleged violations to validate a finding of contempt. The first group is the directives from police to homeless individuals to move. The second group is evidence relating to the taking of personal property by City workers during clean-up operations in 2018. The last is the arrests of the two individuals for obstructing the sidewalk.

Although the Consent Decree contains a general requirement that City police not harass the homeless, the Consent Decree and Police Departmental Order 11 do not explicitly prohibit the police from ordering homeless persons to move from their locations or from sounding loud noises to wake people before a clean-up operation. It goes without saying that directives to move during a clean-up operation are essential to facilitate the pressure washing of the sidewalks. Pressure cleaning, while individuals are sleeping on the sidewalks, is obviously hazardous to their safety. And, not cleaning poses health hazards to them and others. During the clean-up operations, the evidence showed that homeless individuals often moved close by or were offered shelter. Dr. Suarez testified that the team



engages any homeless individual at the clean-up location, helps them to discard any garbage that has accumulated around them, offers them clean clothes and blankets. (Tr. vol. 2, 104). The team then offers shelter placement and, if the offer for shelter is rejected, the team members ask the homeless person to relocate temporarily. *Id.* The City has an interest in preserving the public welfare, hygiene and sanitation. It makes sense and the evidence confirmed that the City's intent was to move these homeless individuals, living in squalor and in encampments, into the continuum of care. The Court does not view the City's actions, in this regard, to be a concerted plan to violate the homeless civil rights. And, there is no clear and convincing evidence that requiring the homeless to move I during clean-up operations was a violation of the Decree, especially because the evidence showed that people returned to the locations after the clean-ups and no one was arrested.

As noted, *supra*, the Plaintiffs argue there are four instances, outside of a clean-up operation, where the police were harassing homeless individuals and ordering them to move, Java Brooks, Rafael Villalonga, Guthrie Chibanguza, and Willie Richardson. Other than the general prohibition on harassment contained in Consent Decree, there is nothing in the Consent Decree or in the Police Departmental Order 11 specifically precluding a police officer from instructing someone to move. Moreover, the testimony from the witnesses and the video evidence did not show the underlying circumstances under which the officers issued the directives. To find civil contempt, the Court must find by clear and convincing evidence that the *Pottinger* Agreement clearly and unambiguously said that officers could not ask homeless individuals to move or the evidence must show that the police officers were harassing these individuals. The evidence

does not establish a violation of the Decree's general statement that the police not harass the homeless. Therefore, the standard for civil contempt is not met.

The Plaintiffs also seek to hold the City in contempt due to their handling of homeless individuals' personal property. Again, the *Pottinger* Agreement allows officers and City workers to take unattended property in accordance with their internal procedures and discard property that is contaminated. The Consent Decree also contains a general requirement that City police and outreach workers treat the property of the homeless with respect.

The majority of Plaintiffs' witnesses complained about the handling of property during clean-up operations. Witnesses testified that workers moved in quickly and that they had little time to collect their belongings. Homeless individuals testified that they left items in backpacks, bags, and positioned out of the way and that their property was kicked around, thrown into piles, and then loaded into trucks to be disposed. Plaintiffs' witnesses also testified that City workers routinely did not allow homeless persons to retrieve and save the property of another homeless person from disposal. But, it would be unreasonable for City workers to decide their course of action based on a non-owner's statement regarding abandoned property. The evidence also showed that City workers complied with their procedures, gave notice ahead of time, provided outreach to affected individuals, gave homeless persons bags to put away their belongings, and left notes at the scene on the fences to let people know the location of property. Some of Plaintiffs' own witnesses testified that they were able to keep the property on them, and retrieve property belonging to others. The evidence also showed the gravity of the circumstances at these clean-up spots, which has already been

detailed in this order. Even assuming that, at times, the City workers could have handled the homeless person's belongings more delicately, the Court does not find that a violation of the Consent Decree occurred by clear and convincing evidence. The Consent Decree allows the City workers to take property in a manner consistent with their procedures. The evidence showed that, at least for the most part, that was done, and to discard contaminated property. Deciphering what is and is not contaminated inside a bag is difficult and going through a bag that possesses contaminated materials to fish out identifications and medications is not a requirement of the Consent Decree. The evidence did not show an officer or a worker taking away identifications and medications, rather it showed that those items were unfortunately lost as part of a process of cleaning areas in desperate need of sanitation. The Court does not hold the City in contempt for its handling of the personal belongings.

Finally, the Court, for reasons already detailed in this Order, does not find the two arrests are sufficient to meet the standard that the City violated the decree and should be held in contempt. There is no evidence as to what preceded the arrests, and as such, the standard for contempt is not met.

#### Heroes for the Homeless

Although the Plaintiffs have opposed the termination of this agreement, in a very real sense, they are the victors. Their lawsuit, and the work of their excellent and capable counsel, under the guidance of the Americans Civil Liberties Union and the Florida Justice Institute, engendered a revolution in this community as to the treatment and care of persons experiencing homelessness. Twenty years ago, the undersigned could not have predicted the myriad of services made possible by the

efforts of the Homeless Trust and Mr. Ronald L. Book. The Court could not have envisioned the dedication of people, like Dr. Pedro Joe Greer and Dr. Edward Suarez, who have taken medicine to the streets of Miami to help people and gain their trust to improve their care. The lifetime of work by Camillus CEO Hilda Fernandez is commendable as she has worked in a variety of roles to assist the homeless and better their lives in a truly compassionate way. The work of Constance Collins at the Lotus House has also contributed to aiding homeless women and children and helped them find solutions to homelessness. It goes without saying that this community owes a debt of gratitude to Judge Steve Leifman, who has implemented sustainable programs to help the mentally ill, which will continue to improve their circumstances. Simply put, Judge Atkins would be proud of the results. Accordingly, it is

ADJUDGED that the Court terminates the Consent Decree and denies the motion to hold the City of Miami in contempt.

DONE AND ORDERED in Chambers at Miami, Florida, this 15<sup>th</sup> of February 2019.



**Jane DOE 1 and Jane Doe  
2, Petitioners,**

**v.**

**UNITED STATES, Respondent.**

**CASE NO. 08-80736-CIV-MARRA**

United States District Court,  
S.D. Florida.

Signed 02/21/2019

**Background:** Alleged minor victims of federal sex crimes brought action against

David PEERY, Plaintiff-Appellant,

v.

CITY OF MIAMI, Defendant-Appellee.

No. 19-10957

United States Court of Appeals,  
Eleventh Circuit.

(October 1, 2020)

**Background:** After city and police were found to violate the rights of homeless persons, a settlement was reached and consent decree was entered prohibiting arrest of homeless individuals without cause and protecting their property. The United States District Court for the Southern District of Florida, No. 1:88-cv-02406-FAM, Federico A. Moreno, J., 359 F.Supp.3d 1177, granted city's motion to terminate consent decree, and denied plaintiffs' motion to enforce decree and to find city in contempt. Plaintiffs appealed.

**Holdings:** The Court of Appeals, William H. Pryor, Chief Judge, held that:

- (1) under decree, property became "contaminated" when it was commingled with items that were contaminated or hazardous
- (2) police did not violate provision of decree providing that city expressly adopted a policy "to protect the constitutional rights of homeless persons, to prevent arrests and harassment of these persons, and the destruction of their property," by telling homeless persons to "move on";
- (3) decree did not require police to first offer services before telling individuals to move;
- (4) phrase "one warning" in provision of decree requiring that after one warning, no person may obstruct a sidewalk in such a way as to endanger others by requiring them to walk on the street

instead of an otherwise-walkable sidewalk, did not require one contemporaneous warning;

- (5) district court correctly bifurcated its analysis of cross-motions to terminate decree and seeking contempt for violation of decree;
- (6) city was in substantial compliance with decree, and thus, decree was satisfied and termination of decree was warranted; and
- (7) the homeless failed to prove any violations of decree, as required to find city in contempt.

Affirmed.

See also 810 F.Supp. 1551.

#### 1. Federal Courts ⇌3604(2)

Court of Appeals reviews a decision regarding the enforcement or termination of a consent decree for abuse of discretion.

#### 2. Federal Courts ⇌3603(2)

Court of Appeals reviews factual findings for clear error.

#### 3. Federal Courts ⇌3604(2)

Court of Appeals reviews de novo the interpretation of a consent decree and the application of a consent decree to the facts.

#### 4. Federal Civil Procedure ⇌2397.5

The party seeking termination of a consent decree bears a heavy burden of persuasion. Fed. R. Civ. P. 60(b)(5).

#### 5. Federal Civil Procedure ⇌2397.4

Because rule providing for relief from a judgment because it has been satisfied, released, or discharged, it is based on an earlier judgment that has been reversed or vacated, or applying it prospectively is no longer equitable, uses the disjunctive "or," the party seeking termination of a consent decree under rule can prevail if any of the

three grounds applies. Fed. R. Civ. P. 60(b)(5).

#### **6. Federal Civil Procedure** ⚖️2397.4

Rule providing for relief from a judgment because it has been satisfied, released, or discharged, it is based on an earlier judgment that has been reversed or vacated, or applying it prospectively is no longer equitable, is especially flexible in the context of institutional-reform consent decrees, which involve areas of core state responsibility and raise sensitive federalism concerns. Fed. R. Civ. P. 60(b)(5).

#### **7. Federal Civil Procedure** ⚖️2397.5

In the context of institutional-reform consent decrees, courts must ensure that responsibility for discharging the State's obligations is returned promptly to the State and its officials when the circumstances warrant.

#### **8. Federal Civil Procedure** ⚖️2397.6

Once a durable remedy is in place, continued enforcement of an institutional-reform consent decree is not only unnecessary, but improper.

#### **9. Federal Civil Procedure** ⚖️2397.5

##### **Federal Courts** ⚖️3045(2)

Because a consent decree is a contract, the court follows the rules for interpretation of contracts and apply principles of state contract law.

#### **10. Contracts** ⚖️152

In Florida, the plain meaning of the language used by the parties controls as the best indication of the parties' agreement, so contract terms should be interpreted in accordance with their plain and ordinary meaning.

#### **11. Contracts** ⚖️152

Florida courts look to dictionaries to determine the plain and ordinary meaning of words in a contract.

#### **12. Federal Civil Procedure** ⚖️2397.5

Under consent decree prohibiting city workers from destroying any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person, except as permissible by law and in accordance with the department's operating procedure, or if the property is contaminated or otherwise poses a health hazard or obvious safety issue to city workers or to members of the public, property became "contaminated" when it was commingled with items that were contaminated or hazardous.

See publication Words and Phrases for other judicial constructions and definitions.

#### **13. Federal Civil Procedure** ⚖️2397.5

Under consent decree prohibiting city from destroying any personal property readily recognizable as property of a homeless person, with certain exceptions, third parties' statements as to the property's status were probative of ownership, particularly because police knew that it was common for homeless people to temporarily leave items and ask others to watch their property during their absence.

#### **14. Federal Civil Procedure** ⚖️2397.6

Homeless persons did not establish violation of provision of consent decree prohibiting city workers from destroying any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person, except as permissible by law and in accordance with the department's operating procedure, or if the property is contaminated or otherwise poses a health hazard or obvious safety issue to city workers or to members of the public; ban on destruction of readily recognizable property did not apply when the property was contaminated or otherwise a health hazard or obvious safety issue, and district court found that city's

takings of property were to discard contaminated property, not due to the unrecognizedability of the property as that of a homeless person.

**15. Federal Civil Procedure** ⇨2397.6

Police did not violate provision of consent decree, providing that city expressly adopted a policy “to protect the constitutional rights of homeless persons, to prevent arrests and harassment of these persons, and the destruction of their property,” by telling homeless persons to “move on”; there was no evidence that the move-on orders were either systematic or intended to annoy, but rather, they ordinarily occurred to facilitate needed cleaning, the orders were temporary, and there was no evidence that police threatened the subjects of the move-on orders with arrest or that the individuals risked arrest if they later returned to their preferred locations.

**16. Arrest** ⇨60.1(2)

The Fourth Amendment does not encompass a right to remain in any public place; a person who is told to leave one place but remains free to go anywhere else that he wishes can undoubtedly terminate his encounter with police. U.S. Const. Amend. 4.

**17. Arrest** ⇨60.4(1)

Even when a person is not free to leave, there is not necessarily a seizure under the Fourth Amendment; the key question is whether a reasonable person can terminate the encounter with police. U.S. Const. Amend. 4.

**18. Constitutional Law** ⇨4101

Any constitutionally protected liberty interest, for purposes of due process, to be in parks or on other city lands that are open to the public generally, is neither fundamental, nor limitless, so even if a permanent deprivation of access to public

spaces might violate the Due Process Clause, there is no constitutional right to use public parks under all conditions and at all times. U.S. Const. Amend. 14.

**19. Federal Civil Procedure** ⇨2397.5

Consent decree between city and homeless persons did not require police to first offer services before telling individuals to move; consent decree stated that there could be no arrest or detention of homeless persons not engaged in any criminal conduct, and that a law enforcement officer “may” approach a homeless person and advise him or her of shelter, services, or assistance which are then currently available, but because decree did not say that police may approach a non-criminal homeless person only to offer shelter, police could approach them for other, non-prohibited purposes as well.

**20. Federal Civil Procedure** ⇨2397.5

Phrase “one warning” in provision of consent decree between city and homeless persons, requiring that after one warning, no person may obstruct a sidewalk in such a way as to endanger others by requiring them to walk on the street instead of an otherwise-walkable sidewalk, did not require one contemporaneous warning; if drafters intended to require one warning per homeless-police interaction, they would have done so expressly.

**21. Federal Civil Procedure** ⇨2397.6

A party seeking contempt for violation of a consent decree bears the initial burden to show that the consent decree has been violated.

**22. Federal Civil Procedure** ⇨2397.5, 2397.6

A district court errs if it merges or cross-applies the burdens applicable to a party seeking to terminate a consent decree and a party seeking contempt for violation of decree.

**23. Federal Civil Procedure** ⚡2397.5, 2397.6

District court correctly bifurcated its analysis of cross-motions to terminate consent decree between city and homeless persons, and seeking contempt for violation of decree; in considering termination, district court focused on what city affirmatively established by looking to city policies, available resources, and testimony from both sides, it then considered whether any alleged violations were significant enough to render city noncompliant, and found that, even crediting the allegations of the homeless, the actions were not the type of deviation necessary to find a lack of substantial compliance, and instead they were minor or trivial enough not to undermine decree's objectives, and only after applying the burden for termination did it consider whether any violations met the contempt standard.

**24. Federal Civil Procedure** ⚡2397.6

Review for substantial compliance with a consent decree requires considering the totality of the circumstances; where the balance of the evidence is close, a few disputed findings or omissions might be outcome-determinative.

**25. Federal Civil Procedure** ⚡2397.5, 2397.6

District court made factual findings in favor of city, with respect to question of whether city workers' takings of property violated consent decree between city and homeless persons, and thus, district court did not misapply burdens on motion to terminate decree and cross-motion seeking contempt for violation of decree; district court found the workers' takings complied with the consent decree, because workers took only items that were commingled with items such as backpacks, mattresses, sheets, or food, that clearly posed health and security concerns, that is, contaminat-

ed or hazardous items not protected by the consent decree.

**26. Federal Civil Procedure** ⚡2397.5, 2397.6

District court made factual findings in favor of city, with respect to question of whether city left notices at clean-up sites after taking property, and thus, district court did not misapply burdens on motion to terminate consent decree between city and homeless persons and cross-motion seeking contempt for violation of decree; district court found that evidence showed that city workers complied with their procedures, including by leaving notes at the scene on the fences to let people know the location of property.

**27. Federal Courts** ⚡3711

District court's failure to discuss past informal objections made by the homeless to city's practices was at most, harmless error, when considering motion to terminate consent decree between city and homeless persons and cross-motion seeking contempt for violation of decree; what mattered was whether city was presently in compliance, and whether it was committed to remaining in compliance, and district court correctly focused its analysis on city's current actions to determine whether it was then in substantial compliance, and additional consideration of a few incidents alleged to have occurred several years earlier did not bear on the determination of present compliance.

**28. Federal Courts** ⚡3565

Abuse of discretion is a deferential standard, and the Court of Appeals' review is especially deferential where the district court has effectively been overseeing a large public institution over a long period of time.

**29. Federal Civil Procedure ⇌2397.5**

City was in substantial compliance with requirements of consent decree prohibiting arrest of homeless individuals without cause and protecting their property, and thus, decree was satisfied and termination of decree was warranted; core purpose of decree was stopping the criminalization of homelessness, all police officers received training on decree's requirements, city put in place body-camera-usage, records-keeping, and disciplinary procedures to monitor and regulate interactions between police and homeless, city created procedures and training for other city departments, including procedures for handling property, and city and surrounding community developed a wide array of programs to support continued compliance, such as programs to provide shelter, medical care, and other services. Fed. R. Civ. P. 60(b)(5).

**30. Federal Civil Procedure ⇌2397.5**

To evaluate a motion to terminate a consent decree, the district court begins by determining the basic purpose of the decree; if there is good-faith compliance, the decree is satisfied, and the court may terminate it. Fed. R. Civ. P. 60(b)(5).

**31. Federal Civil Procedure ⇌2397.6**

Because a consent decree is a contract, compliance is measured in terms of substantial performance.

**32. Federal Civil Procedure ⇌2397.6**

Substantial performance, or substantial compliance, exists when a consent decree's fundamental purpose has been accomplished, and any deviations from the decree are unintentional and so minor or trivial as to not substantially defeat the object which the parties intended to accomplish.

**33. Federal Civil Procedure ⇌2397.6**

There need not be strict and literal compliance with the contract provisions to achieve substantial compliance with a consent decree.

**34. Federal Civil Procedure ⇌2397.5**

A federal court should terminate supervision over a consent decree once the defendant comes into substantial compliance with the law, because indefinite federal court oversight of state institutions is disfavored. Fed. R. Civ. P. 60(b)(5).

**35. Federal Civil Procedure ⇌2397.6**

The purpose of a consent decree is not to be conceived at too high a level of generality, when determining whether substantial compliance with the decree has been achieved. Fed. R. Civ. P. 60(b)(5).

**36. Federal Civil Procedure ⇌2397.5**

To prove the consent decree's purpose has been fully achieved, a party seeking to terminate the decree has to establish (1) current substantial, good-faith compliance, and (2) that it is unlikely to return to its former ways absent the consent decree.

**37. Federal Civil Procedure ⇌2397.5**

If a party seeking to terminate a consent decree has put a durable remedy in place, the district court should terminate the decree.

**38. Federal Civil Procedure ⇌2397.6**

Compliance with a consent decree is determined in relation to the object which the parties intended to accomplish.

**39. Federal Civil Procedure ⇌2397.6**

Consent decrees are enforced through the trial court's civil contempt power.

**40. Federal Civil Procedure ⇌2397.6**

A party seeking an order holding a defendant in contempt for violating a consent decree must move the court to issue an order to show cause why the defendant

should not be adjudged in civil contempt and sanctioned.

#### 41. Contempt ⚖️40

The district court must apply the procedures for evaluating civil contempt, regardless of whether either party explicitly requests them.

#### 42. Contempt ⚖️60(3)

Before the district court grants a show-cause order, the movant must first establish by clear and convincing evidence that the alleged contemnor violated a court's earlier order.

#### 43. Contempt ⚖️20, 60(3)

The required clear and convincing evidence that an alleged contemnor violated a court's earlier order must establish that: (1) the allegedly violated order was valid and lawful; (2) the order was clear and unambiguous; and (3) the alleged violator had the ability to comply with the order.

#### 44. Contempt ⚖️60(1)

Any ambiguities are construed in favor of a party charged with contempt.

#### 45. Contempt ⚖️60(1)

Only if a party moving for contempt makes its prima facie showing does the burden shift to the alleged contemnor to produce evidence explaining its noncompliance at a show cause hearing.

#### 46. Federal Civil Procedure ⚖️2397.6

The homeless failed to prove any violations of consent decree prohibiting arrest of homeless individuals without cause and protecting their property, as required to find city in contempt.

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Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 1:88-cv-02406-FAM

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Kerri McNulty, Warren Bittner, Carlos Humberto Gamez, John Anthony Greco, Christopher Allan Green, Douglas Andrew Harrison, George Kearsley Wysong, III, Office of the Miami City Attorney, Forrest Lee Andrews, Lydecker Diaz, LLC, Kendall Coffey, Coffey Burlington, PL, Scott Allan Cole, Thomas Emerson Scott, Jr., Cole Scott & Kissane, PA, Anna Theresa Neill, Kenny Nachwalter, PA, Juan Carlos Perez, Angones McClure & Garcia, PA, Miami, FL, for Defendant-Appellee.

Before WILLIAM PRYOR, Chief Judge, TJOFLAT and HULL, Circuit Judges.

WILLIAM PRYOR, Chief Judge:

This appeal requires us to decide whether the district court abused its discretion when it terminated a consent decree that regulated how the City of Miami treats its homeless residents. Twenty years after the consent decree's adoption, the City moved to terminate it based on changed circumstances, fulfillment of its purpose, and substantial compliance with its requirements. The homeless argued the City was still systematically violating the consent decree and moved the district court to hold the City in contempt and to sanction it for committing the violations. The district court ruled the City had not violated the consent decree, granted its motion for termination, and denied the opposing motion



for contempt. Because the district court correctly interpreted the decree and did not abuse its discretion by terminating the decree, we affirm.

## I. BACKGROUND

In 1998, the City of Miami entered into a consent decree concerning its treatment of the homeless. The decree arose out of a complaint filed by a class of homeless persons against the City. The district court determined the City had unconstitutionally arrested homeless persons for “life-sustaining conduct” and “used the arrest process for the ulterior purpose of driving the homeless from public areas.” *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1566, 1580–83 (S.D. Fla. 1992). After mediation, the parties reached a settlement agreement known as the *Pottinger* Agreement, which the district court adopted as a consent decree.

Under the consent decree, the City “adopt[ed] a policy . . . to protect the constitutional rights of homeless persons, to prevent arrests and harassment of these persons, and the destruction of their property, inconsistent with the provisions of this Settlement Agreement.” The consent decree mandated a variety of City policies, including restrictions on how City employees may interact with the homeless and dispose of their property. For example, it created a category of “life sustaining conduct” misdemeanors: activities like camping in parks or loitering in restrooms. When police observe a homeless person committing such a crime, they ordinarily may arrest the person only if there is available shelter, the officer offers shelter, and the person refuses the shelter. The City also promised to respect the personal property of the homeless and to follow its internal procedures for taking custody of that property. The consent decree ordinarily bars the City from “destroy[ing] any

personal property known to belong to a homeless person, or readily recognizable as property of a homeless person,” such as “belongings organized or packaged together in a way indicating it has not been abandoned.” But it permits the City to dispose of property that “is contaminated or otherwise poses a health hazard to [City] workers or to members of the public.”

In 2013, the district court granted the motion of the homeless to add Carole Patman and David Peery as class representatives; the original class representatives were either deceased or unlocatable. Shortly thereafter, in 2014, the district court approved the parties’ proposed modification to the consent decree. Among other changes, the modification narrowed the scope of “life sustaining conduct” misdemeanors. Under the revised consent decree, “after one warning,” individuals may not block otherwise-walkable sidewalks. Subject to the modification, the City of Miami has been bound by the consent decree for more than 20 years.

After it adopted the decree, the City enacted internal reforms and programs to support the homeless. The Homeless Trust, the funder and overseer of the “continuum of care” for the homeless in Miami-Dade County, manages a panoply of services that did not exist before the decree. Its programs include homeless assistance centers, a hotline for homeless persons seeking aid, and housing and healthcare facilities. And the City created outreach teams that help the homeless find the resources they need. These efforts have contributed to a 90 percent reduction in countywide homelessness levels since the adoption of the consent decree. The remaining homeless population consists predominantly of the chronically homeless, who are resistant to offers of shelter.

Against this backdrop, the City in 2018 moved to terminate the consent decree or, at least, to modify it, and provided three reasons for that requested relief. First, it had remedied the underlying constitutional violations and so fulfilled the purpose of the decree. Second, changed circumstances—including increased safety concerns amid the risk of urban terrorist attacks and the rise of the opioid epidemic—made *Pottinger*'s continuation inequitable. Third, substantial, good-faith compliance with the consent decree obviated the need for continued judicial oversight.

Simultaneously, the homeless moved to enforce the consent decree and to hold the City in contempt for “systematic” violations of the decree. In particular, the homeless alleged that the City violated the decree during its 2018 clean-up operations. The operations addressed health and sanitation problems at the downtown homeless encampments. One witness described a clean-up site as a “horror movie” and “opioid den” that required a special biohazard waste clean-up crew. The City tried to relocate the encampments' residents before the clean-ups, but some residents remained as the operations began. City workers ordered those individuals to move so that the clean-ups could occur, and some homeless persons lost possessions they left behind during the clean-ups. The homeless alleged that the real purpose of the clean-ups was to target and disperse the homeless and that the move-on orders and takings of property violated the consent decree.

After a seven-day evidentiary hearing, the district court granted the City's request for termination and denied the homeless class's motion for enforcement and contempt. It terminated the decree because the City “ha[d] substantially complied with the core purpose of the *Pottinger* Agreement,” that is, “to stop the

criminalization of homelessness.” The development of extensive non-arrest resources “is exactly the type of durable remedy that requires this Court to cease its oversight of these primarily state functions.” The district court found no evidence that would negate a finding of substantial compliance. The district court also found changed circumstances in Miami, but it did not rely on those findings as a basis for termination.

The district court denied the contempt motion because the evidence did not prove any violations of the consent decree, much less by the required standard of clear and convincing evidence. It explained why the City's actions during the clean-ups did not violate the consent decree. The purpose of the clean-ups was to combat “squalor and unsanitary conditions,” a goal that benefited the homeless. The City discarded only property that was “commingled with [items] . . . that clearly pose[d] health and security concerns”—in other words, items *Pottinger* permitted the City to discard. And the consent decree did not forbid police officers from telling the homeless to move, both before the clean-ups and in other circumstances. Finally, the district court declined to make a finding regarding whether arrests of two homeless persons not preceded by warnings to stop obstructing the sidewalk violated the consent decree because there was no evidence of the events leading up to the arrest. Regardless, the district court found that “overwhelming evidence supports the finding that City police will not revert to arresting [homeless] individuals.”

## II. STANDARD OF REVIEW

[1–3] We review a decision regarding the enforcement or termination of a consent decree for abuse of discretion. *Johnson v. Florida*, 348 F.3d 1334, 1341 (11th Cir. 2003); *Resnick v. Uccello Immobiliari*

*GMBH, Inc.*, 227 F.3d 1347, 1350 (11th Cir. 2000). We review factual findings for clear error. *Johnson*, 348 F.3d at 1341. And we review *de novo* the interpretation of a consent decree and the application of a consent decree to the facts. *Reynolds v. McInnes*, 338 F.3d 1201, 1211 (11th Cir. 2003).

### III. DISCUSSION

[4, 5] A district court may terminate a consent decree when “the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.” Fed. R. Civ. P. 60(b)(5). As the party seeking termination, the City “bears a heavy burden of persuasion.” *Johnson*, 348 F.3d at 1341. But because Rule 60(b)(5) uses the disjunctive “or,” the City can prevail if any of the three grounds applies. *Horne v. Flores*, 557 U.S. 433, 454, 129 S.Ct. 2579, 174 L.Ed.2d 406 (2009).

[6–8] The application of Rule 60(b)(5) is especially flexible in the context of institutional-reform consent decrees like the *Pottinger* Agreement, which “involve[ ] areas of core state responsibility” and “raise sensitive federalism concerns.” *Id.* at 448, 450, 129 S.Ct. 2579. Courts must “ensure that responsibility for discharging the State’s obligations is returned promptly to the State and its officials when the circumstances warrant.” *Id.* at 450, 129 S.Ct. 2579 (internal quotation marks omitted). To do otherwise is to usurp the role of elected officials and deprive the people of their right to a democratically accountable government. *See generally* Ross Sandler & David Schoenbrod, *Democracy by Decree: What Happens When Courts Run Government* (2003). Once a durable remedy is in place, “continued enforcement of the [consent decree] is not only unnecessary, but

improper.” *Horne*, 557 U.S. at 450, 129 S.Ct. 2579.

The homeless argue that the district court erred in its interpretation and application of the consent decree and that it misapplied the burden of proof for the motion for termination. We consider and reject these arguments in turn. We then explain why the district court was correct to grant the City’s motion for termination and to deny the homeless class’s motion for enforcement and contempt.

#### A. The District Court Correctly Interpreted and Applied the Consent Decree.

[9–11] Because a consent decree is a contract, we follow the rules for interpretation of contracts and apply principles of state contract law. *Frulla v. CRA Holdings, Inc.*, 543 F.3d 1247, 1252 (11th Cir. 2008); *Reynolds v. Roberts*, 202 F.3d 1303, 1312–13 (11th Cir. 2000). In Florida, “the plain meaning of the language used by the parties controls as the best indication of the parties’ agreement,” so contract terms “should be interpreted in accordance with their plain and ordinary meaning.” *In re Std. Jury Instructions—Contract & Bus. Cases*, 116 So. 3d 284, 315 (Fla. 2013). Florida courts look to dictionaries to determine the plain and ordinary meaning of words. *Winn-Dixie Stores, Inc. v. Dolgen-corp, LLC*, 746 F.3d 1008, 1024 (11th Cir. 2014).

The homeless argue the district court misinterpreted several provisions of the consent decree. We examine each interpretive dispute in turn. Although the homeless identify one misinterpretation, they fail to identify any errors that establish noncompliance by the City.

As modified, the consent decree prohibits City workers from “destroy[ing] any personal property known to belong to a homeless person, or readily recognizable

as property of a homeless person . . . except as permissible by law and in accordance with the department's operating procedure, or if the property is *contaminated* or otherwise *poses a health hazard* or *obvious safety issue* to [City] workers or to members of the public." The district court concluded that items are contaminated when they are "commingled with food, soiled materials, and garbage creating a public health crisis." If a bag contains contaminated property, "[d]eciphering what is and is not contaminated inside a bag is difficult and going through a bag that possesses contaminated materials to fish out [uncontaminated materials] is not a requirement of the [c]onsent [d]ecree." The homeless argue that this interpretation erroneously allows City workers to discard property in unsanitary *areas*, instead of requiring an individualized determination whether property is hazardous.

[12] We agree with the district court that property becomes contaminated when it is commingled with items that are contaminated or hazardous. Take, for example, personal notes that are "mingle[d] or mix[ed] together" with unsanitary items such as garbage or bodily fluids. *Commingle*, Webster's New International Dictionary (3d ed. 1993). The exposure makes the notes "soil[ed], stain[ed], corrupt[ed], or infect[ed] by contact or association" and "unfit for use [because of] the introduction of unwholesome or undesirable elements." *Contaminate*, Webster's New International Dictionary (3d ed. 1993). And exposure transforms the notes into "a *possible* source of peril, danger, duress, or difficulty." *Hazard*, Webster's New International Dictionary (3d ed. 1993) (emphasis added). Likewise, if a bag has been contaminated or contains contaminated items, City workers need not search through it for still-clean items. The entire bag is hazardous because of the health and safety risks in-

involved. When a worker decides to discard contaminated items, his decision reflects an assessment of each item's status, not that of the surrounding area. Indeed, the City consistently left uncontaminated items, such as "unattended bicycles, which pose no . . . health risk, . . . on the street."

[13] The consent decree also prohibits "destroy[ing] any personal property . . . readily recognizable as property of a homeless person." The district court concluded that it would be "unreasonable" for City workers to credit a non-owner's statement when determining whether property is abandoned, such as when another homeless person tells the workers of the property's status. The homeless argue that this interpretation incorrectly allows police to ignore evidence of property's ownership.

[14] We agree with the homeless that third parties' statements are probative of ownership, particularly because police know that it is common for homeless people to temporarily leave items and to ask others to watch their property during their absence. But it makes no difference here. The consent decree's ban on destruction of readily recognizable property does not apply when the property is contaminated or otherwise a health hazard or obvious safety issue. And the district court found that the City's takings of property were "to discard contaminated property," not due to the unrecognizability of the property as that of a homeless person. As we have explained, the district court correctly understood the consent decree's exception for contaminated property.

[15] Section VI.9 of the consent decree provides that the City "expressly adopt[ed] a policy as provided for herein to protect the constitutional rights of homeless persons, to prevent arrests and harassment of these persons, and the destruction of their property, inconsistent with the provisions

of this Settlement Agreement.” The district court ruled that, although the consent decree generally prohibited harassment and “specifically prohibited arrests,” it did not prohibit the police from ordering the homeless to move. The homeless contend that this interpretation condones police harassment and misconduct less invasive than arrest in violation of a categorical promise to protect the constitutional rights of the homeless. They argue that, by telling homeless persons to “move on,” police violate fundamental constitutional rights, including the “right to remain in a public place unaccosted by the government.”

The homeless misunderstand Section VI.9 in several ways. To start, this provision is not categorical. It contains two qualifiers: the City “adopt[ed] a policy” to advance the listed objectives only “as provided for herein,” and the City aims to accomplish the objectives only to the extent they are “[c]onsistent with the provisions of this Settlement Agreement.” Instead of a categorical obligation, the provision operates as a statement of purpose, identifying the goals to be advanced elsewhere in the consent decree. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 34, at 219 (2012) (“[A]n expansive purpose in the preamble cannot add to the specific dispositions of the operative text.”). As a prefatory statement, it does not have binding effect; the City violates the consent decree only by violating one of its specific requirements. *Johnson v. Johnson*, 725 So. 2d 1209, 1212–13 (Fla. Dist. Ct. App. 1999).

Moreover, police move-on orders do not raise a constitutional issue. The homeless assert the orders violate their Fourth, Fifth, and Fourteenth Amendment rights. They are incorrect.

[16, 17] The homeless urge us to adopt the view of our sister circuit that the

Fourth Amendment encompasses a right to remain in any public place. *See Bennett v. City of Eastpointe*, 410 F.3d 810, 834 (6th Cir. 2005). We decline to do so. *Bennett* purports to apply *Florida v. Bostick*, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991), but *Bostick* cuts the other way. *Bostick* makes clear that even when a person is not free to leave, there is not necessarily a seizure under the Fourth Amendment. *Id.* at 435–36, 111 S.Ct. 2382. The key question is whether a reasonable person can “terminate the encounter” with police. *Id.* at 439, 111 S.Ct. 2382. A person who is told to leave one place but “remains free to go anywhere else that he wishes” can undoubtedly terminate his encounter. *Salmon v. Blesser*, 802 F.3d 249, 253 (2d Cir. 2015).

[18] To be sure, *Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011), recognized a “constitutionally protected liberty interest,” for purposes of due process, “to be in parks or on other city lands . . . that are open to the public generally.” *Id.* at 1266 (citing *City of Chicago v. Morales*, 527 U.S. 41, 54, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999) (plurality opinion)). But this liberty interest is neither fundamental, *see Doe v. City of Lafayette*, 377 F.3d 757, 769–73 (7th Cir. 2004), nor limitless. So even if a permanent deprivation of access to public spaces might violate the Due Process Clause, there is no “constitutional right to use public parks under all conditions and at all times.” *Catron*, 658 F.3d at 1266–67 n.5; *accord Hannemann v. S. Door Cnty. Sch. Dist.*, 673 F.3d 746, 757 (7th Cir. 2012).

Police often ask individuals to temporarily leave public spaces, *Salmon*, 802 F.3d at 253, and doing so does not create a constitutional deprivation. Nor are move-on orders inherently harassment. Harassment involves repeated or systematic behavior, and it involves efforts to annoy or

bother. See, e.g., *Harass*, Webster's New International Dictionary (3d ed. 1993) ("to vex, trouble, or annoy continually or chronically"); *Harassment*, Black's Law Dictionary (11th ed. 2019) ("Words, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress to that person and serves no legitimate purpose; purposeful vexation."); *Harass*, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/harass> ("to annoy persistently") (last visited Sept. 30, 2020). There is no evidence that the move-on orders were either systematic or intended to annoy. On the contrary, they ordinarily occurred to facilitate needed cleaning. And the orders were temporary: there is no evidence that police threatened the subjects of the move-on orders with arrest or that the individuals risked arrest if they later returned to their preferred locations. Insofar as any member of the homeless class believes his civil rights have been violated, he may seek relief in an individual action. See 42 U.S.C. § 1983.

[19] The homeless also erroneously contend the district court should have found the City in violation of the decree for instances where police told individuals to move without first offering services. The consent decree states that, for homeless persons not engaged in any criminal conduct, "[t]here can be no arrest or detention. A law enforcement officer . . . may approach the homeless person and advise him or her of shelter, services, or assistance which are then currently available." But "may" alone is not an exclusive term. Because the consent decree does not say that police may approach the non-criminal homeless *only* to offer shelter, police may approach them for other, non-prohibited purposes as well. Scalia & Garner, *Reading Law* § 8, at 93–94; accord *Bauer Nike*

*Hockey USA, Inc. v. United States*, 393 F.3d 1246, 1250 (Fed. Cir. 2004). Even if the homeless consider this outcome odd as a policy matter, where the plain meaning of the text is clear, "something that may seem odd . . . is no basis for disregarding or changing the text." Scalia & Garner, *Reading Law* § 37, at 237 (internal quotation marks omitted).

[20] Next, the homeless argue that the phrase "one warning" in the consent-decree modification means one *contemporaneous* warning. The modified decree requires that "after one warning, no person . . . may obstruct a sidewalk in such a way as to endanger other persons by requiring them" to walk on the street instead of an otherwise-walkable sidewalk. The homeless contend that police violate the consent decree by arresting an obstructor without first warning him to desist, even if the obstructor has been warned on several previous occasions. They argue that the consent decree's purpose is to protect the homeless, so we should construe "one warning" to provide maximal protection. But the question is what the text says, and assumptions based on purpose alone beg the question. "No text pursues its purpose at all costs." Scalia & Garner, *Reading Law* § 2, at 57.

If the drafters of the 2014 modification intended to require one warning per homeless-police interaction, they "would have done so expressly." *Dir. of Rev. v. CoBank ACB*, 531 U.S. 316, 325 (2001). Indeed, the modification simultaneously added a requirement that police must give a contemporaneous warning before they may cite a homeless person for littering if there is a usable trash receptacle within 300 feet. Material variations in the text reflect variations in meaning. See Scalia & Garner, *Reading Law* § 25, at 170. So we do not read the phrase "after one warning" to mean a warning every time.

Suppose a police officer sees a homeless person obstructing the sidewalk and warns him to stop. The modification establishes that “after [that] warning, [the] person . . . may [not fully] obstruct a sidewalk.” If on later patrols the officer sees the same homeless person again obstructing the same sidewalk, must the officer repeat his warning continually to reinstate the prohibition? Perhaps the homeless are right that contemporaneous warnings are desirable. But we must follow the text of the decree and respect the omissions the drafters chose to make. *See* Scalia & Garner, *Reading Law* § 8, at 95–96.

Finally, the homeless point to two “interpretations” by the district court that were not interpretations at all. The district court suggested the homeless “should” keep important items such as “identifications, prescriptions, eye glasses, or phones” on their person, to minimize the risk of loss. Contrary to the assertion of the homeless, this statement did not create an extratextual requirement; it instead described a best practice. And the district court referenced one instance where police ordered a homeless person to move that was “admittedly under investigation by the City of Miami Police Internal Affairs.” The homeless contend that this reference meant that the district court allowed internal investigations to excuse violations of the consent decree. But the district court only described the facts of that episode, and it later correctly concluded that police may tell the homeless to move.

*B. The District Court Correctly Applied the Burden of Proof on the City’s Motion for Termination.*

[21, 22] The party seeking to terminate a consent decree “bears a heavy burden of persuasion” to justify termination. *Johnson*, 348 F.3d at 1341. But the party seeking contempt bears the initial burden to

show that the consent decree has been violated. *FTC v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010). A district court errs if it merges or cross-applies these burdens. *Jeff D. v. Otter*, 643 F.3d 278, 285, 287 (9th Cir. 2011).

According to the homeless, the district court misapplied these burdens. They argue that the district court effectively assigned them the burden on the motion to terminate because the court did not make factual findings in a few instances where the homeless presented evidence. But this argument misunderstands both the standard for termination and the record.

[23] The district court correctly bifurcated its analyses of the two motions. *Cf. Jeff D.*, 643 F.3d at 285. In considering termination, it focused on what the City affirmatively established by looking to City policies, available resources, and testimony from both sides. It then considered whether any alleged violations were significant enough to render the City noncompliant. It found that, even crediting the allegations of the homeless, the actions were not “the type of deviation necessary to find a lack of substantial compliance”; they were “minor” or “trivial” enough not to undermine the consent decree’s objectives. Only after applying the burden for termination did the district court consider whether any of the violations met the contempt standard.

[24] Moreover, review for substantial compliance requires considering the totality of the circumstances. *See Jackson v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1200, 1203 (10th Cir. 2018). Where the balance of the evidence is close, a few disputed findings or omissions might be outcome-determinative. But the district court found the weight of the evidence by far favored the City. Indeed, the district court suggested that, even construing instances of alleged police misconduct—one of the issues where the homeless say the

district court shifted the burden of proof by failing to make factual findings—in favor of the homeless, the City would still satisfy its burden of proving substantial compliance.

The other three “errors” identified by the homeless are of no help either. In two, the district court made factual findings for the City. And in one, any error was harmless.

[25] First, the district court did not ignore the question whether City workers’ takings of property violated the consent decree, as the homeless contend. Instead, the district court found the workers’ takings complied with the consent decree. City workers took only items that were “commingled with backpacks, mattresses, sheets, food, etc. that clearly pose health and security concerns”—contaminated or hazardous items not protected by the consent decree.

[26] Second, the district court did not leave open whether the City left notices at clean-up sites after taking property. Instead, it found that “[t]he evidence . . . showed that City workers complied with their procedures,” including by “le[aving] notes at the scene on the fences to let people know the location of property.” To the extent the homeless dispute the factual findings, we affirm them on clear-error review: the findings are “plausible in light of the record viewed in its entirety.” *Anderson v. Bessemer City*, 470 U.S. 564, 573–74, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985). Indeed, the homeless acknowledge there is evidence in the record of the City’s provision of notice.

[27] True, the district court did not discuss past informal objections made by the homeless to the City’s practices. And informal consent-decree enforcement can be relevant to evaluating compliance. But the district court’s omission was, at most,

harmless error. *Cf. John B. v. Emkes*, 710 F.3d 394, 411 (6th Cir. 2013).

What matters is whether the City is “now in compliance . . . , and whether [it is] committed to remaining in compliance.” *Jackson*, 880 F.3d at 1203 (emphasis added). The district court correctly focused its analysis on the City’s 2018 actions to determine whether it was then in substantial compliance. The homeless argue the district court should also have addressed allegations they previously raised informally, but the only possible violations they identify are isolated occurrences from 2009 and 2014. Additional consideration of a few incidents alleged to have occurred several years earlier does not bear on the determination of present compliance.

*C. The District Court Did Not Abuse Its Discretion by Granting the Motion for Termination.*

[28] Abuse of discretion is a deferential standard, and our review is especially deferential where, as here, “the District Court has effectively been overseeing a large public institution over a long period of time”—in this case, since 1999. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 394, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992) (O’Connor, J., concurring in the judgment); *see also Labor/Cnty. Strategy Ctr. v. L.A. Cnty. Metro. Transp. Auth.*, 564 F.3d 1115, 1121 (9th Cir. 2009) (explaining that the district court is “uniquely positioned” to evaluate consent-decree compliance). We must affirm unless the homeless can prove “there was no reasonable basis for the district court’s termination order.” *Gonzales v. Galvin*, 151 F.3d 526, 531 (6th Cir. 1998). They cannot satisfy their burden: the district court’s ruling was both reasonable and correct.

[29] A court should terminate a consent decree if at least one of three grounds



is met: if “the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.” Fed. R. Civ. P. 60(b)(5); *Horne*, 557 U.S. at 454, 129 S.Ct. 2579. The City argues, and the district court agreed, that it has “satisfied” the judgment through substantial compliance with the consent decree’s requirements. Although this ground “has been relied on very rarely” in our caselaw, 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2863, at 450 (2012), the City is correct that it has satisfied the judgment if it is in substantial compliance with the consent decree. *See, e.g., Frew v. Janek*, 780 F.3d 320, 330–32 (5th Cir. 2015). And the district court was correct to find the City in substantial compliance.

[30, 31] To evaluate a motion to terminate a consent decree, the district court begins “by determining the basic purpose of the decree.” *United States v. City of Miami*, 2 F.3d 1497, 1505 (11th Cir. 1993). If there is good-faith compliance, the decree is satisfied, and the court may terminate it. *See id.* Because a consent decree is a contract, *Reynolds*, 202 F.3d at 1312, we measure compliance in terms of substantial performance. *Johnson*, 348 F.3d at 1344; *City of Miami*, 2 F.3d at 1508 n.38.

[32–34] Substantial performance, or substantial compliance, exists when the consent decree’s fundamental purpose has been accomplished, and any deviations from the decree are “unintentional and so minor or trivial as not substantially to defeat the object which the parties intend[ed] to accomplish.” *Jeff D.*, 643 F.3d at 284, 288 (internal quotation marks omitted). There need not be “strict and literal compliance with the contract provisions.” *Id.* at 284 (internal quotation marks omitted); *accord In re Std. Jury Instructions*,

116 So. 3d at 306–07. So “a federal court should terminate supervision once the defendant comes into [substantial] compliance with the law,” because “indefinite federal court oversight of state institutions is disfavored.” *Johnson*, 348 F.3d at 1341.

[35] The district court identified the “core purpose” of the consent decree as “stop[ping] the criminalization of homelessness.” This purpose follows from the history of *Pottinger*: the original lawsuit arose to stop the City from “arresting [the homeless] for the involuntary, harmless acts they were forced to perform in public and seizing and destroying the [property of the homeless] without following its own[] procedures.” And that definition accords with our directive that “the purpose of the decree . . . is not to be conceived at too high a level of generality.” *Sierra Club v. Meiburg*, 296 F.3d 1021, 1031 n.11 (11th Cir. 2002).

[36, 37] To prove the consent decree’s purpose has been “fully achieved,” the City had to establish (1) current substantial, good-faith compliance, and (2) that it is “unlikely . . . [to] return to its former ways” absent the consent decree. *Bd. of Educ. v. Dowell*, 498 U.S. 237, 247, 111 S.Ct. 630, 112 L.Ed.2d 715 (1991). If the City has put a “durable remedy” in place, the district court should terminate the consent decree. *Horne*, 557 U.S. at 450, 129 S.Ct. 2579.

The record supports the finding by the district court that the City is in substantial compliance. That finding depends on “the City’s record of compliance with the decree,” as well as other relevant undertakings. *City of Miami*, 2 F.3d at 1508. The district court found that the City achieved “the goal of the [c]onsent [d]ecree . . . to reform the manner that City [p]olice treated the homeless.” All police officers receive training on *Pottinger*’s requirements,

and the City has put in place body-camera-usage, records-keeping, and disciplinary procedures to monitor and regulate interactions between the police and the homeless. As a result, the City no longer “arrests . . . the homeless for being homeless.” The City also created procedures and training for other City departments, including procedures for handling property. The City provided “ample evidence” these procedures were followed, such as through the placement of notices in advance of clean-ups and the provision of shelter beds for the displaced homeless.

The record also supports the finding that compliance will continue after the termination of the decree. The City of Miami and the surrounding community have developed a wide array of programs. This “continuum of care” includes the Homeless Trust, which receives \$60 million in tax revenue each year, and various programs to “provide shelter, medical care, and other services,” as well as “to avoid putting the mentally ill in jails.” These programs, along with formal police policies, constitute a durable remedy. Because the City has a strong system in place to address homelessness, it is unlikely to revert to arrest-ing or mistreating the homeless.

[38] The homeless argue that the violations hidden by the “misinterpretations” of the decree by the district court, combined with the City’s failure to develop consistent procedures for handling the property of the homeless, foreclosed a finding of substantial compliance. We disagree. As we have explained, the district court did not overlook any alleged violations of the consent decree. Nor do the homeless identify any inconsistencies in the City’s procedures that could bar a finding of substantial compliance. Compliance is determined in relation to “the object which the parties intend[ed] to accomplish.” *Jeff D.*, 643 F.3d at 284 (internal quotation marks omitted).

So inconsistencies or violations are relevant if they undermine the goal of “stop[ping] the criminalization of homelessness.” But they are not relevant when, for example, the City provides more notice than its policies require, or there is variation in which agency posts the required notice. Even with discrepancies of this kind, there has been “performance nearly equivalent to what was bargained for.” *Pullam v. Hercules, Inc.*, 711 So.2d 72, 75 (Fla. Dist. Ct. App. 1998) (internal quotation marks omitted).

*D. The District Court Did Not Abuse  
Its Discretion by Denying the  
Motion for Contempt.*

[39–41] Consent decrees “are enforced through the trial court’s civil contempt power.” *Reynolds v. Roberts*, 207 F.3d 1288, 1298 (11th Cir. 2000). A party seeking an order holding the defendant in contempt for violating the consent decree must “move[ ] the court to issue an order to show cause why the defendant should not be adjudged in civil contempt and sanctioned.” *Id.* The homeless did not specifically ask the district court to issue a show-cause order in their contempt motion. But the district court must apply the procedures for evaluating civil contempt, regardless of whether either party explicitly requests them. *See Mercer v. Mitchell*, 908 F.2d 763, 767 n.7 (11th Cir. 1990).

[42–45] Before the district court grants a show-cause order, the movant “must first establish by clear and convincing evidence that the alleged contemnor violated a court’s earlier order.” *Chairs v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998) (alterations adopted) (internal quotation marks omitted). “The clear and convincing evidence must establish that: (1) the allegedly violated order was valid and lawful; (2) the order was clear and unambiguous; and (3) the alleged violator had

the ability to comply with the order.” *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1296 (11th Cir. 2002). We construe any ambiguities in favor of the party charged with contempt. *Leshin*, 618 F.3d at 1231. Only if the moving party makes its prima facie showing does the burden “shift[ ] to the alleged contemnor to produce evidence explaining [its] noncompliance at a show cause hearing.” *Id.* at 1232 (internal quotation marks omitted).

[46] The homeless failed to prove any violations of the consent decree, much less any “unambiguous” violations. *Riccard*, 307 F.3d at 1296; *see also Doe, 1-13 ex rel. Doe Sr. 1-13 v. Bush*, 261 F.3d 1037, 1062 (11th Cir. 2001) (explaining that conduct cannot implicate contempt if it was in accordance with a “reasonable interpretation” of the consent decree). Because the homeless failed to make the necessary prima facie showing, the burden never shifted to the City to explain its noncompliance, and there was no need for a show-cause hearing. *See Thomas v. Blue Cross & Blue Shield Ass’n*, 594 F.3d 814, 821 (11th Cir. 2010). The district court correctly denied the contempt motion.

#### IV. CONCLUSION

We **AFFIRM** the termination of the consent decree and the denial of the contempt motion.



**UNITED STATES of America,**  
**Plaintiff-Appellee,**

**v.**

**James INNOCENT, Defendant-**  
**Appellant.**

**United States of America,**  
**Plaintiff-Appellee,**

**v.**

**Elijah Hasan Jones, Defendant-**  
**Appellant.**

**No. 19-10112, No. 18-15210**

United States Court of Appeals,  
Eleventh Circuit.

(October 8, 2020)

**Background:** Two defendants were convicted in the United States District Court for the Southern District of Florida, No. 0:18-cr-60224-KMM-1, K. Michael Moore, Chief Judge, and No. 1:18-cr-20319-KMW-1, Patricia A. Seitz, Senior District Judge, of possessing firearms as felons, and one defendant received 15-year mandatory minimum sentence under Armed Career Criminal Act (ACCA). Defendants appealed.

**Holdings:** The Court of Appeals, William H. Pryor, Chief Judge, held that:

- (1) first defendant’s substantial rights were not affected by plain error arising from indictment’s failure to allege defendant’s knowledge of his felon status;
- (2) same plain error did not substantially affect second defendant’s substantial rights; and
- (3) defendant sentenced under ACCA invited the alleged error regarding a prior conviction allegedly not qualifying as a violent felony.

Affirmed.

#### 1. Criminal Law ⇌1030(1)

The Court of Appeals reviews for plain error issues raised for the first time on appeal.

**U.S. District Court  
Southern District of Florida (Miami)  
CIVIL DOCKET FOR CASE #: 1:22-cv-21939-BB**

Cooper-Levy et al v. City of Miami  
Assigned to: Judge Beth Bloom  
Referred to: Magistrate Judge Alicia M. Otazo-Reyes  
Cause: 42:1983 Civil Rights Act

Date Filed: 06/24/2022  
Jury Demand: Defendant  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
06/24/2022	<u>1</u>	COMPLAINT against City of Miami. Filing fees \$ 402.00 receipt number AFLSDC-15740722, filed by Jospheh Simmons, Latoyla Yasheen Cooper-Levy, Sherman Rivers, Phillip Sylverin. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summon(s))(Hearne, Jeffrey) (Entered: 06/24/2022)
06/24/2022	2	Clerks Notice of Judge Assignment to Judge Beth Bloom.  Pursuant to 28 USC 636(c), the parties are hereby notified that the U.S. Magistrate Judge Alicia M. Otazo-Reyes is available to handle any or all proceedings in this case. If agreed, parties should complete and file the Consent form found on our website. It is not necessary to file a document indicating lack of consent. (swr) (Entered: 06/24/2022)
06/24/2022	<u>3</u>	Summons Issued as to City of Miami. (swr) (Entered: 06/24/2022)
06/24/2022	4	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Stephen J. Schnably. Filing Fee \$ 200.00 Receipt # AFLSDC-15741092 by Latoyla Yasheen Cooper-Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Responses due by 7/8/2022 (Attachments: # <u>1</u> Text of Proposed Order)(Hearne, Jeffrey) (Entered: 06/24/2022)
06/24/2022	5	PAPERLESS ORDER granting <u>4</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Attorney Stephen J. Schnably. Signed by Judge Beth Bloom (ak03) (Entered: 06/24/2022)



07/07/2022	<u>6</u>	NOTICE of Attorney Appearance by Christopher Allan Green on behalf of City of Miami. Attorney Christopher Allan Green added to party City of Miami(pty:dft). (Green, Christopher) (Entered: 07/07/2022)
07/07/2022	<u>7</u>	NOTICE of Attorney Appearance by Kerri Lauren McNulty on behalf of City of Miami. Attorney Kerri Lauren McNulty added to party City of Miami(pty:dft). (McNulty, Kerri) (Entered: 07/07/2022)
07/13/2022	<u>8</u>	NOTICE of Attorney Appearance by Bryan E. Capdevila on behalf of City of Miami. Attorney Bryan E. Capdevila added to party City of Miami(pty:dft). (Capdevila, Bryan) (Entered: 07/13/2022)
07/13/2022	<u>9</u>	Unopposed MOTION for Extension of Time to file Response/Answer by City of Miami. Responses due by 7/27/2022 (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 07/13/2022)
07/13/2022	<u>10</u>	PAPERLESS ORDER granting <u>9</u> Defendant's Unopposed Motion for Enlargement of Time to File Response to Complaint. Defendant shall file its response to the Complaint <b>no later than August 18, 2022</b> . Answer/response Deadline 8/18/2022. Signed by Judge Beth Bloom (ak03) (Entered: 07/13/2022)
07/13/2022		Reset Deadlines City of Miami /answer due 9/18/2022. Per DE#10. (cqs) (Entered: 07/14/2022)
07/29/2022	<u>11</u>	ORDER REQUIRING SCHEDULING REPORT AND CERTIFICATES OF INTERESTED PARTIES Joint Scheduling Report due by 8/15/2022 Signed by Judge Beth Bloom on 7/29/2022. <i>See attached document for full details.</i> (cqs) (Entered: 07/29/2022)
08/15/2022	<u>12</u>	Joint SCHEDULING REPORT – <b>Rule 16.1</b> by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin (Hearne, Jeffrey) (Entered: 08/15/2022)
08/15/2022	<u>13</u>	Certificate of Other Affiliates/Corporate Disclosure Statement – NONE disclosed by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin (Hearne, Jeffrey) (Entered: 08/15/2022)
08/15/2022	<u>14</u>	Certificate of Other Affiliates/Corporate Disclosure Statement by City of Miami (Capdevila, Bryan) (Entered: 08/15/2022)
08/16/2022	<u>15</u>	ORDER SETTING TRIAL AND PRE–TRIAL SCHEDULE, REQUIRING MEDIATION, AND REFERRING CERTAIN MATTERS TO MAGISTRATE JUDGE: Amended Pleadings due by 10/17/2022. Discovery due by 3/7/2023. Fact Discovery due by 3/7/2023. Expert Discovery due by 3/7/2023. Joinder of Parties due by 10/17/2022. Mediation Deadline 3/21/2023. In Limine Motions due by 3/29/2023. Dispositive Motions due by 3/29/2023. Motions due by 3/29/2023. Pretrial Stipulation due by 6/19/2023. Jury Trial set for 7/3/2023 9:00 AM in Miami Division before Judge Beth Bloom. Calendar Call set for 6/27/2023 1:45 PM in Miami Division before Judge Beth Bloom. ORDER REFERRING CASE to Magistrate Judge Alicia M. Otazo–Reyes for Discovery Matters. Signed by Judge Beth Bloom on 8/16/2022. <i>See attached document for full details.</i> (scn)  <b><u>Pattern Jury Instruction Builder</u></b> – To access the latest, up to date changes to the 11th Circuit Pattern Jury Instructions go to <a href="https://pji.ca11.uscourts.gov">https://pji.ca11.uscourts.gov</a> or click <a href="#">here</a> . (Entered: 08/16/2022)
08/18/2022	<u>16</u>	MOTION TO DISMISS <u>1</u> Complaint, FOR FAILURE TO STATE A CLAIM by City of Miami. Responses due by 9/1/2022 (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 08/18/2022)
09/01/2022	<u>17</u>	RESPONSE in Opposition re <u>16</u> MOTION TO DISMISS <u>1</u> Complaint, FOR FAILURE TO STATE A CLAIM filed by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Replies due by 9/8/2022. (Hearne, Jeffrey) (Entered: 09/01/2022)
09/06/2022	<u>18</u>	Joint NOTICE of Mediator Selection and Hearing. Selected/Added Latoyla Yasheen Cooper–Levy, Norman Gerstein as Mediator. Mediation Hearing set for 3/10/2023 at 10:00 a.m.. (Attachments: # <u>1</u> Text of Proposed Order)(Hearne, Jeffrey) (Entered: 09/06/2022)
09/07/2022	<u>19</u>	ORDER Scheduling Mediation before Norman Gerstein Mediation Hearing set for 3/10/2023 10:00 AM Signed by Judge Beth Bloom on 9/6/2022. <i>See attached document for full details.</i> (cqs) (Entered: 09/07/2022)
09/08/2022	<u>20</u>	Unopposed MOTION for Extension of Time to File Response/Reply/Answer by City of Miami. (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 09/08/2022)

09/08/2022	<u>21</u>	PAPERLESS ORDER granting <u>20</u> Defendant's Unopposed Motion for Extension of Time to File Reply. Defendant shall file its reply in support of the Motion to Dismiss, <b>no later than September 19, 2022</b> . Replies due by 9/19/2022. Signed by Judge Beth Bloom (ak03) (Entered: 09/08/2022)
09/19/2022	<u>22</u>	REPLY to Response to Motion re <u>16</u> MOTION TO DISMISS <u>1</u> Complaint, FOR FAILURE TO STATE A CLAIM filed by City of Miami. (Capdevila, Bryan) (Entered: 09/19/2022)
12/06/2022	<u>23</u>	ORDER denying <u>16</u> Motion to Dismiss for Failure to State a Claim. Answer due by 12/16/2022 Signed by Judge Beth Bloom on 12/6/2022. <i>See attached document for full details.</i> (cqs) (Entered: 12/06/2022)
12/16/2022	<u>24</u>	ANSWER and Affirmative Defenses to Complaint with Jury Demand by City of Miami. (Capdevila, Bryan) (Entered: 12/16/2022)
12/19/2022	<u>25</u>	Unopposed MOTION to Withdraw as Attorney by Christopher Green for / by City of Miami. Responses due by 1/3/2023 (Green, Christopher) (Entered: 12/19/2022)
12/19/2022	<u>26</u>	PAPERLESS ORDER granting <u>25</u> Unopposed Motion to Withdraw as Counsel for City of Miami. Christopher Allan Green representing City of Miami (Defendant) withdrawn from case. Signed by Judge Beth Bloom (ak03) (Entered: 12/19/2022)
01/20/2023	<u>27</u>	MOTION for Extension of Time as to Remaining Deadlines and to Modify Scheduling Order by City of Miami. Responses due by 2/3/2023 (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 01/20/2023)
01/20/2023	<u>29</u>	ORDER Amending Scheduling Order And Certain Pretrial Deadlines. Order granting <u>27</u> Motion to Modify Scheduling Order. Discovery due by 5/2/2023. Expert Discovery due by 5/2/2023. Mediation Deadline 5/16/2023. Dispositive Motions due by 5/24/2023. In Limine Motions due by 5/24/2023. Motions due by 5/24/2023. Pretrial Stipulation due by 8/14/2023. Calendar Call set for 8/22/2023 01:45 PM in Miami Division before Judge Beth Bloom. Jury Trial set for 8/28/2023 09:00 AM in Miami Division before Judge Beth Bloom. Signed by Judge Beth Bloom on 1/20/2023. <i>See attached document for full details.</i> (kpe) (Entered: 01/23/2023)
01/22/2023	<u>28</u>	Amended MOTION for Extension of Time as to Remaining Deadlines and to Modify Scheduling Order by City of Miami. Responses due by 2/6/2023 (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 01/22/2023)
01/23/2023	<u>30</u>	PAPERLESS ORDER denying as moot <u>28</u> Defendant's Amended Motion to Modify Scheduling Order. The Court modified the trial date in a manner consistent with Defendant's requested relief in its Order Amending Scheduling Order And Certain Pretrial Deadlines, ECF No. <u>29</u> . Signed by Judge Beth Bloom (jg01) (Entered: 01/23/2023)
02/08/2023	<u>31</u>	Joint MOTION to Reschedule Mediation by Latoyla Yasheen Cooper-Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Attachments: # <u>1</u> Text of Proposed Order)(Hearne, Jeffrey) (Entered: 02/08/2023)
02/09/2023	<u>32</u>	ORDER RESCHEDULING MEDIATION, granting <u>31</u> Motion to RESCHEDULING MEDIATION. The mediation conference in this case shall be held on or before April 19, 2023, at 10:00 a.m. with Norman Gerstein via Zoom video conference. Signed by Judge Beth Bloom on 2/9/2023. <i>See attached document for full details.</i> (cqs) (Entered: 02/10/2023)
03/30/2023	<u>33</u>	Joint MOTION to Continue <i>Trial Date</i> by Latoyla Yasheen Cooper-Levy. Responses due by 4/13/2023 (Attachments: # <u>1</u> Text of Proposed Order ORDER GRANTING JOINT MOTION TO MODIFY SCHEDULING ORDR AND TO CONTINUE TRIAL DATE)(Hearne, Jeffrey) (Entered: 03/30/2023)
03/31/2023	<u>34</u>	ORDER AMENDING SCHEDULING ORDER AND CERTAIN PRETRIAL DEADLINES, granting <u>33</u> Motion to Continue. Discovery due by 6/27/2023. Expert Discovery due by 6/27/2023. Fact Discovery due by 6/27/2023. Mediation Deadline 7/11/2023. Dispositive Motions due by 7/19/2023. In Limine Motions due by 7/19/2023. Motions due by 7/19/2023. Pretrial Stipulation due by 10/6/2023. Calendar Call set for 10/17/2023 01:45 PM before Judge Beth Bloom. Jury Trial set for 10/23/2023 09:00 AM in Miami Division before Judge Beth Bloom. Signed by Judge Beth Bloom on 3/31/2023. <i>See attached document for full details.</i> (cqs) (Entered: 03/31/2023)
04/18/2023	<u>35</u>	Joint MOTION for Extension of Time to reschedule mediation by Latoyla Yasheen Cooper-Levy. Responses due by 5/2/2023 (Attachments: # <u>1</u> Exhibit Order on Joint Motion to Reschedule Mediation)(Hearne, Jeffrey) (Entered: 04/18/2023)

04/18/2023	<u>36</u>	PAPERLESS ORDER granting <u>35</u> Motion for Extension of Time to Reschedule Mediation to June 21, 2023 at 10:00 am, via Zoom video conference. Signed by Judge Beth Bloom (BB) (Entered: 04/18/2023)
05/26/2023	<u>37</u>	UNOPPOSED MOTION to Modify the Scheduling Order ( Responses due by 6/9/2023) by Joseph Simmons. (Attachments: # <u>1</u> Exhibit ORDER GRANTING PLAINTIFFS UNOPPOSED MOTION TO MODIFY THE SCHEDULING ORDER)(Hearne, Jeffrey) Modified text and relief on 5/26/2023 (pes). (Entered: 05/26/2023)
05/30/2023	<u>38</u>	THIRD ORDER AMENDING SCHEDULING ORDER AND CERTAIN PRETRIAL DEADLINES,granting <u>37</u> Motion to Amend ; granting <u>37</u> Motion for Extension of Time. Signed by Judge Beth Bloom on 5/26/2023. <i>See attached document for full details.</i> (mee) (Entered: 05/30/2023)
06/08/2023	<u>39</u>	Unopposed MOTION to Seal per Local Rule 5.4 by City of Miami. (Attachments: # <u>1</u> Text of Proposed Order) (Capdevila, Bryan) (Entered: 06/08/2023)
06/08/2023	40	PAPERLESS ORDER granting <u>39</u> Motion to Seal. Defendant may file the proposed motion under sealspecifically, the sealed motion for temporary stay, for continuance of trial, and to modify scheduling order and, in the alternative, motion for continuance of trial and to modify scheduling orderwithin 48 hours of this Order. Signed by Judge Beth Bloom (BB) (Entered: 06/08/2023)
06/09/2023		SYSTEM ENTRY – Docket Entry 41 [motion] restricted/sealed until further notice. (2004243) (Entered: 06/09/2023)
06/12/2023	<u>42</u>	ORDER ON SEALED MOTION FOR TEMPORARY STAY, ( Responses due by 6/14/2023) Signed by Judge Beth Bloom on 6/12/2023. <i>See attached document for full details.</i> (cqs) (Entered: 06/12/2023)
06/14/2023	<u>43</u>	Unopposed Motion to Seal re DE# 40 Order on Motion to Seal, by Latoyla Yasheen Cooper–Levy. (Attachments: # <u>1</u> Exhibit PROPOSED] ORDER GRANTING PLAINITFFS UNOPPOSED MOTION TO SEAL) (Hearne, Jeffrey) Modified on 6/15/2023 by unsealing document as document is public document per Local Rules (kpe). (Entered: 06/14/2023)
06/14/2023	<u>44</u>	Unopposed MOTION to Seal per Order authorizing the submission of this document under seal by Latoyla Yasheen Cooper–Levy. (Hearne, Jeffrey) (Entered: 06/14/2023)
06/14/2023	45	PAPERLESS ORDER granting <u>44</u> Motion to Seal. Plaintiffs may file their response to the Motion for a Temporary Stay, ECF No. 41 , under seal and file a motion to appoint next friend under seal. Signed by Judge Beth Bloom (jg01) (Entered: 06/14/2023)
06/14/2023		SYSTEM ENTRY – Docket Entry 46 [misc] restricted/sealed until further notice. (874155) (Entered: 06/14/2023)
06/15/2023	<u>47</u>	ORDER On Plaintiffs' Unopposed Sealed Motion To Seal. Order denying as moot 41 Sealed Motion for a Temporary Stay. Signed by Judge Beth Bloom on 6/14/2023. <i>See attached document for full details.</i> (kpe) (Entered: 06/15/2023)
06/15/2023	48	Clerk's Notice to Filer re <u>43</u> Motion. <b>Wrong Event Selected; ERROR</b> – The Filer selected the wrong event. The document was corrected by the Clerk. It is not necessary to refile this document. (kpe) (Entered: 06/15/2023)
06/15/2023		SYSTEM ENTRY – Docket Entry 49 [motion] restricted/sealed until further notice. (874155) (Entered: 06/15/2023)
06/19/2023	<u>50</u>	Joint MOTION to Waive Appearances at Mediation by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Attachments: # <u>1</u> Text of Proposed Order)(Hearne, Jeffrey) (Entered: 06/19/2023)
06/21/2023	<u>51</u>	ORDER granting <u>50</u> Motion TO WAIVE APPEARANCES AT MEDIATION. Signed by Judge Beth Bloom on 6/20/2023. <i>See attached document for full details.</i> (cqs) (Entered: 06/21/2023)
06/21/2023	<u>52</u>	ORDER Granting in Part and Denying in Part 41 Sealed Motion for Temporary Stay; Denying as Moot <u>43</u> Motion to Seal. Signed by Judge Beth Bloom on 6/21/2023. <i>See attached document for full details.</i> (cds) (Entered: 06/21/2023)
06/21/2023	<u>53</u>	FINAL MEDIATION REPORT by Ret. Hon. Norman S. Gerstein. Disposition: Case did not settle. Mediation held/partially held via video–conference. (Hearne, Jeffrey) (Entered: 06/21/2023)

06/21/2023	<u>54</u>	FOURTH ORDER AMENDING SCHEDULING ORDER AND CERTAIN PRETRIAL DEADLINES In Limine Motions due by 8/18/2023. Dispositive Motions due by 8/18/2023. Motions due by 8/18/2023. Pretrial Stipulation due by 11/6/2023. Jury Trial set for 11/20/2023 09:00 AM in Miami Division before Judge Beth Bloom. Calendar Call set for 11/14/2023 01:45 PM in Miami Division before Judge Beth Bloom. Signed by Judge Beth Bloom on 6/21/2023. <i>See attached document for full details.</i> (cqs) (Entered: 06/22/2023)
06/30/2023	<u>55</u>	Unopposed MOTION for Leave to File <i>Defendant's Response In Opposition to Plaintiffs' Sealed Motion for Appointment of Next Friend Out of Time</i> by City of Miami. (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 06/30/2023)
06/30/2023	<u>56</u>	Unopposed MOTION for Leave to File <i>to File Defendant's Response in Opposition to Plaintiffs' Sealed Motion for Appointment of Next Friend Under Seal</i> by City of Miami. (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 06/30/2023)
07/01/2023	<u>57</u>	Unopposed MOTION to Take Deposition from Plaintiff Latoyla Ishia Cooper (also known as, "Latoyla Yasheen Cooper-Levy") by City of Miami. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 07/01/2023)
07/05/2023		SYSTEM ENTRY – Docket Entry 58 [order] restricted/sealed until further notice. (amb) (Entered: 07/05/2023)
07/05/2023	59	PAPERLESS ORDER denying as moot <u>55</u> Motion for Leave to File. See Sealed Order at ECF No. 58 . Signed by Judge Beth Bloom (BB) (Entered: 07/05/2023)
07/05/2023	60	PAPERLESS ORDER denying as moot <u>56</u> Motion for Leave to File. See the Court's Order at ECF No. 58 . Signed by Judge Beth Bloom (BB) (Entered: 07/05/2023)
07/05/2023	<u>61</u>	ORDER granting <u>57</u> Motion to Take Deposition from Latoyla Ishia Cooper. Signed by Judge Beth Bloom on 7/5/2023. <i>See attached document for full details.</i> (cqs) (Entered: 07/05/2023)
07/07/2023	<u>62</u>	Joint MOTION for Protective Order by Latoyla Yasheen Cooper-Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Attachments: # <u>1</u> Text of Proposed Order Stipulated Protective Order)(Dunn, Chelsea) (Entered: 07/07/2023)
07/07/2023	<u>63</u>	STIPULATED PROTECTIVE ORDER. Signed by Magistrate Judge Alicia M. Otazo-Reyes on 7/7/2023. <i>See attached document for full details.</i> (Attachments: # <u>1</u> Exhibit A – Declaration of Compliance) (aa00) (Entered: 07/07/2023)
08/14/2023	<u>64</u>	Unopposed MOTION for Leave to File <i>Conventionally</i> by City of Miami. (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 08/14/2023)
08/14/2023	<u>65</u>	Unopposed MOTION for Leave to File Excess Pages by City of Miami. (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 08/14/2023)
08/14/2023	66	PAPERLESS ORDER granting <u>65</u> Motion for Leave to File Excess Pages. The City's summary judgment motion may not exceed 30 pages in length and its separately filed statement of material facts may not exceed 20 pages in length. Signed by Judge Beth Bloom (BB) (Entered: 08/14/2023)
08/14/2023	67	PAPERLESS ORDER granting <u>64</u> Motion for Leave to File Conventionally. Signed by Judge Beth Bloom (BB) (Entered: 08/14/2023)
08/16/2023	<u>68</u>	Unopposed MOTION for Leave to File Excess Pages <i>for Motion for Summary Judgment and Statement of Undisputed Facts</i> by Latoyla Yasheen Cooper-Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Attachments: # <u>1</u> Text of Proposed Order)(Hearne, Jeffrey) (Entered: 08/16/2023)
08/16/2023	<u>69</u>	Joint MOTION for Extension of Time to file motions in limine by Latoyla Yasheen Cooper-Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Responses due by 8/30/2023 (Attachments: # <u>1</u> Text of Proposed Order)(Hearne, Jeffrey) (Entered: 08/16/2023)
08/16/2023	70	PAPERLESS ORDER granting <u>68</u> Motion for Leave to File Excess Pages. Plaintiff's motion for summary judgment may not exceed 30 pages in length and the separately filed statement of undisputed facts may not exceed 20 pages in length. Signed by Judge Beth Bloom (BB) (Entered: 08/16/2023)
08/16/2023	71	PAPERLESS ORDER granting <u>69</u> Motion for Extension of Time to File motions in limine by August 28, 2023. Signed by Judge Beth Bloom (BB) (Entered: 08/16/2023)

08/17/2023	<u>72</u>	Unopposed MOTION to Seal per Local Rule 5.4 by Latoyla Yasheen Cooper–Levy. (Attachments: # <u>1</u> Exhibit Proposed Order Granting Plaintiff's Unopposed Motion to Seal) (Hearne, Jeffrey) (Entered: 08/17/2023)
08/17/2023	<u>73</u>	PAPERLESS ORDER granting <u>72</u> Motion to Seal. Plaintiffs may file under seal the deposition transcript of Audrey Delricho, next friend of Joseph Simmons. Signed by Judge Beth Bloom (jg01) (Entered: 08/17/2023)
08/17/2023	<u>74</u>	Plaintiff's NOTICE by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin <i>of Filing Depositions in Support of Plaintiffs' Motion for Partial Summary Judgment</i> (Attachments: # <u>1</u> Deposition 30(b)(6), # <u>2</u> Deposition Candalier, # <u>3</u> Deposition Chin–Queen, # <u>4</u> Deposition Collins, # <u>5</u> Deposition Cooper–Levy, # <u>6</u> Deposition Jackson, # <u>7</u> Deposition McClean, # <u>8</u> Deposition Morrison, # <u>9</u> Deposition Porro, # <u>10</u> Deposition Rivers, # <u>11</u> Deposition Rosemond, # <u>12</u> Deposition Sanders, # <u>13</u> Deposition Simmons, # <u>14</u> Deposition Sylverin, # <u>15</u> Deposition Torres, # <u>16</u> Deposition Trueba, # <u>17</u> Deposition Vera, # <u>18</u> Deposition Wiggins) (Siegel, Jodi) (Entered: 08/17/2023)
08/17/2023	<u>75</u>	Unopposed MOTION for Leave to File <i>to Conventionally</i> by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Attachments: # <u>1</u> Text of Proposed Order)(Hearne, Jeffrey) (Entered: 08/17/2023)
08/17/2023	<u>76</u>	PAPERLESS ORDER granting <u>75</u> Unopposed MOTION for Leave to File <i>to Conventionally</i> . Signed by Judge Beth Bloom (jg01) (Entered: 08/17/2023)
08/17/2023		SYSTEM ENTRY – Docket Entry 77 [misc] restricted/sealed until further notice. (874155) (Entered: 08/17/2023)
08/18/2023	<u>78</u>	Statement of: Material Facts in Support of Plaintiffs' Motion for Partial Summary Judgment by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin (Attachments: # <u>1</u> Exhibit Cooper–Levy Interrogatory Answers, # <u>2</u> Exhibit City Designations, # <u>3</u> Exhibit City Response to Amended RFA, # <u>4</u> Exhibit Clean Up Notice, # <u>5</u> Exhibit City Response to First RFA, # <u>6</u> Exhibit Inventory Storage Forms, # <u>7</u> Exhibit City's Handwritten Storage Notes)(Siegel, Jodi) (Entered: 08/18/2023)
08/18/2023	<u>79</u>	MOTION for Partial Summary Judgment by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Responses due by 9/1/2023 (Hearne, Jeffrey) (Entered: 08/18/2023)
08/18/2023	<u>80</u>	NOTICE by City of Miami (Attachments: # <u>1</u> 2019 Version of APM 1–19, # <u>2</u> MPD Departmental Order, # <u>3</u> Deposition of David Rosemond, # <u>4</u> Deposition of Sergio Torres, # <u>5</u> Deposition of Cmndr. Chin–Queen, # <u>6</u> Deposition of Wade Sanders, # <u>7</u> Deposition of Plaintiff Cooper–Levy, # <u>8</u> Deposition of Plaintiff Rivers, # <u>9</u> Deposition of Plaintiff Simmons, # <u>10</u> Deposition of Plaintiff Sylverin) (Capdevila, Bryan) (Entered: 08/18/2023)
08/18/2023	<u>81</u>	Statement of: of Material Facts <i>in Support of Summary Judgment</i> by City of Miami (Capdevila, Bryan) (Entered: 08/18/2023)
08/18/2023	<u>82</u>	MOTION for Summary Judgment by City of Miami. Responses due by 9/1/2023 (Capdevila, Bryan) (Entered: 08/18/2023)
08/21/2023	<u>83</u>	NOTICE OF CONVENTIONAL FILING IN SUPPORT <u>79</u> Motion for Partial Summary Judgment by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin (cqs) Text Modified on 8/21/2023 (cqs). (Entered: 08/21/2023)
08/21/2023	<u>84</u>	NOTICE by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin re <u>78</u> Statement,, <u>79</u> MOTION for Partial Summary Judgment <i>of Filing Index of Exhibits</i> (Hearne, Jeffrey) (Entered: 08/21/2023)
08/21/2023	<u>85</u>	NOTICE by City of Miami re <u>82</u> MOTION for Summary Judgment (Capdevila, Bryan) (Entered: 08/21/2023)
08/21/2023	<u>86</u>	Corrected NOTICE by City of Miami re <u>82</u> MOTION for Summary Judgment (Capdevila, Bryan) (Entered: 08/21/2023)
08/23/2023	<u>87</u>	Unopposed MOTION for Extension of Time to File Response/Reply/Answer as to <u>82</u> MOTION for Summary Judgment , <u>79</u> MOTION for Partial Summary Judgment by City of Miami. (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 08/23/2023)

08/24/2023	<u>88</u>	PAPERLESS ORDER granting <u>87</u> Motion for Extension of Time to File Response/Reply to Motion. Responses to Motion for Partial Summary Judgment, ECF No. <u>79</u> , Motion for Summary Judgment, ECF No. <u>82</u> , due by 9/25/2023. Signed by Judge Beth Bloom (jg01) (Entered: 08/24/2023)
08/25/2023	<u>89</u>	MOTION in Limine by City of Miami. (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 08/25/2023)
08/27/2023	<u>90</u>	Amended MOTION in Limine by City of Miami. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 08/27/2023)
08/28/2023	91	PAPERLESS ORDER denying as moot <u>89</u> Motion in Limine. See Amended Motion at ECF No. <u>90</u> . Signed by Judge Beth Bloom (BB) (Entered: 08/28/2023)
08/28/2023	<u>92</u>	MOTION in Limine by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Hearne, Jeffrey) (Entered: 08/28/2023)
09/11/2023	<u>93</u>	RESPONSE in Opposition re <u>90</u> Amended MOTION in Limine filed by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Replies due by 9/18/2023. (Hearne, Jeffrey) (Entered: 09/11/2023)
09/11/2023	<u>94</u>	RESPONSE in Opposition re <u>92</u> MOTION in Limine filed by City of Miami. Replies due by 9/18/2023. (Attachments: # <u>1</u> Judgment of Simmons' Forgery and Fraud Conviction, # <u>2</u> City's Requests for Admissions and Plaintiffs' Responses, # <u>3</u> Judgment of Rivers' Tampering with Evidence Conviction)(Capdevila, Bryan) (Entered: 09/11/2023)
09/18/2023	<u>95</u>	ORDER SCHEDULING TRIAL AND ORDER OF INSTRUCTIONS BEFORE CALENDAR CALL: In Limine Motions due by 11/7/2023. Pretrial Stipulation due by 11/7/2023. Jury Trial set for 11/20/2023 9:00 AM in Miami Division before Judge Beth Bloom. Calendar Call set for 11/14/2023 1:45 PM in Miami Division before Judge Beth Bloom. Signed by Judge Beth Bloom on 9/18/2023. <i>See attached document for full details.</i> (scn)  <b><u>Pattern Jury Instruction Builder</u></b> – To access the latest, up to date changes to the 11th Circuit Pattern Jury Instructions go to <a href="https://pji.ca11.uscourts.gov">https://pji.ca11.uscourts.gov</a> or <a href="#">click here</a> . (Entered: 09/18/2023)
09/18/2023	<u>96</u>	NOTICE of Attorney Appearance by Brandon Luis Fernandez on behalf of City of Miami. Attorney Brandon Luis Fernandez added to party City of Miami(pty:dft). (Fernandez, Brandon) (Entered: 09/18/2023)
09/18/2023	<u>97</u>	REPLY to Response to Motion re <u>90</u> Amended MOTION in Limine filed by City of Miami. (Attachments: # <u>1</u> September 11, 2023 Email, # <u>2</u> Amended Metadata Log, # <u>3</u> Service Email for and Attached Plaintiffs' Third Amended Initial Disclosure)(Capdevila, Bryan) (Entered: 09/18/2023)
09/18/2023	<u>98</u>	REPLY to Response to Motion re <u>92</u> MOTION in Limine filed by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Hearne, Jeffrey) (Entered: 09/18/2023)
09/22/2023	<u>99</u>	Unopposed MOTION for Extension of Time to File Response/Reply/Answer as to <u>82</u> MOTION for Summary Judgment , <u>79</u> MOTION for Partial Summary Judgment by City of Miami. (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 09/22/2023)
09/22/2023	100	PAPERLESS ORDER granting <u>99</u> Motion for Extension of Time to File Response to Motions. Responses due by 10/2/2023. Signed by Judge Beth Bloom (jg01) (Entered: 09/22/2023)
09/30/2023	<u>101</u>	Unopposed MOTION for Leave to File Excess Pages to <i>City of Miami's Response in Opposition to Plaintiffs' Partial Summary Judgment and to City of Miami's Statement of Material Facts in support</i> by City of Miami. (Attachments: # <u>1</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 09/30/2023)
10/02/2023	102	PAPERLESS ORDER granting <u>101</u> Motion for Leave to File Excess Pages. The City's Response in Opposition to the Plaintiffs' Motion for Partial Summary Judgment may not exceed 30 pages in length and the City's separately filed statement of material facts may not exceed 25 pages in length. Signed by Judge Beth Bloom (jg01) (Entered: 10/02/2023)
10/02/2023	<u>103</u>	Statement of: of Material Facts in Support of Defendant's Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment by City of Miami (Capdevila, Bryan) (Entered: 10/02/2023)
10/02/2023	<u>104</u>	RESPONSE in Opposition re <u>79</u> MOTION for Partial Summary Judgment filed by City of Miami. Replies due by 10/10/2023. (Capdevila, Bryan) (Entered: 10/02/2023)

10/02/2023	<u>105</u>	Statement of: of Material Facts Opposing Defendant's Motion for Summary Judgment by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin re <u>81</u> Statement (Hearne, Jeffrey) (Entered: 10/02/2023)
10/02/2023	<u>106</u>	RESPONSE in Opposition re <u>82</u> MOTION for Summary Judgment filed by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Replies due by 10/10/2023. (Hearne, Jeffrey) (Entered: 10/02/2023)
10/09/2023	<u>107</u>	Unopposed MOTION for Leave to File Excess Pages by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Attachments: # <u>1</u> Text of Proposed Order)(Hearne, Jeffrey) (Entered: 10/09/2023)
10/10/2023	<u>108</u>	PAPERLESS ORDER granting <u>107</u> Motion for Leave to File Excess Pages. Both parties will have an additional five (5) pages for their Replies to the Responses to the motions for summary judgment. The Replies may not exceed fifteen (15) pages in length. Signed by Judge Beth Bloom (jg01) (Entered: 10/10/2023)
10/10/2023	<u>109</u>	Statement of: of Material Facts in support of Reply by City of Miami re <u>82</u> MOTION for Summary Judgment (Capdevila, Bryan) (Entered: 10/10/2023)
10/10/2023	<u>110</u>	REPLY to Response to Motion re <u>82</u> MOTION for Summary Judgment filed by City of Miami. (Capdevila, Bryan) (Entered: 10/10/2023)
10/10/2023	<u>111</u>	Statement of: Reply Statement of Material Facts by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin re <u>103</u> Statement (Hearne, Jeffrey) (Entered: 10/10/2023)
10/10/2023	<u>112</u>	REPLY to Response to Motion re <u>79</u> MOTION for Partial Summary Judgment filed by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Hearne, Jeffrey) (Entered: 10/10/2023)
10/19/2023	<u>113</u>	Unopposed MOTION to Continue <i>Trial</i> re <u>95</u> Scheduling Order., by City of Miami. Responses due by 11/2/2023 (Attachments: # <u>1</u> Exhibit Declaration, # <u>2</u> Text of Proposed Order)(Capdevila, Bryan) (Entered: 10/19/2023)
10/20/2023	<u>114</u>	FIFTH ORDER AMENDING SCHEDULING ORDER AND CERTAIN PRETRIAL DEADLINES. Granting in part <u>113</u> Motion to Continue. Pretrial Stipulation due by 12/29/2023. Calendar Call set for 1/9/2024 01:45 PM in Miami Division before Judge Beth Bloom. Jury Trial set for 1/16/2024 09:00 AM in Miami Division before Judge Beth Bloom. Signed by Judge Beth Bloom on 10/19/2023. <i>See attached document for full details.</i> (nwn) (Entered: 10/20/2023)
10/31/2023	<u>115</u>	(STRICKEN PER DE#119)NOTICE of Attorney Appearance by Forrest Lee Andrews on behalf of City of Miami. Attorney Forrest Lee Andrews added to party City of Miami(pty:dft). (Andrews, Forrest)Text Modified on 11/2/2023 (cqs). (Entered: 10/31/2023)
10/31/2023	<u>116</u>	NOTICE by City of Miami <i>for DEPOSITION DESIGNATIONS FOR TRANSCRIPT OF COOPER–LEVY AND</i> (Attachments: # <u>1</u> Deposition Designation – Vera, # <u>2</u> Deposition Designation – Trueba, # <u>3</u> Deposition Designation – Wiggins, # <u>4</u> Deposition Designation – Collins, # <u>5</u> Deposition Designation – Simmons, # <u>6</u> Deposition Designation – Mcclean, # <u>7</u> Deposition Designation – Candelier, # <u>8</u> Deposition Designation – Chin–Queen, # <u>9</u> Deposition Designation – Porro, # <u>10</u> Deposition Designation – Rosemond, # <u>11</u> Deposition Designation – Torres, # <u>12</u> Deposition Designation – Williams) (Andrews, Forrest) (Entered: 10/31/2023)
10/31/2023	<u>117</u>	MOTION for clarification <u>95</u> Scheduling Order., <i>or in the alternative</i> , MOTION for Extension of Time to File Deposition Designations re <u>95</u> Scheduling Order., by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Responses due by 11/14/2023 (Hearne, Jeffrey) (Entered: 10/31/2023)
11/01/2023	<u>118</u>	Clerk's Notice to Filer re <u>115</u> Notice of Attorney Appearance. <b>Login/Signature Block Violation; CORRECTIVE ACTION REQUIRED WITHIN 3 DAYS</b> – The name of attorney e–filing this document via their CM/ECF login does not match the name of attorney on the signature block of the document. The name used for login must match typed name on signature block of the document. This filing is a violation of Section 3J(1) of CM/ECF Admin Procedures and LR 5.1(b). Filer must File a Notice of Striking, then refile document pursuant to CM/ECF Admin Procedures and Local Rules. (cqs) (Entered: 11/01/2023)
11/01/2023	<u>119</u>	NOTICE of Striking <u>115</u> Notice of Attorney Appearance filed by City of Miami by City of Miami (Andrews, Forrest) (Entered: 11/01/2023)

11/01/2023	<u>120</u>	SECOND ORDER OF INSTRUCTIONS BEFORE CALENDAR CALL; granting <u>117</u> Motion for Clarification; granting <u>117</u> Motion for Extension of Time. Signed by Judge Beth Bloom on 11/1/2023. <i>See attached document for full details.</i> (nwn) (Entered: 11/02/2023)
11/01/2023		Set/Reset Deadlines/Hearings: Pretrial Stipulation due by 12/29/2023. Calendar Call set for 1/9/2024 01:45 PM in Miami Division before Judge Beth Bloom. Jury Trial set for 1/16/2024 09:00 AM in Miami Division before Judge Beth Bloom. PER DE <u>120</u> . (nwn) (Entered: 11/02/2023)
11/02/2023	<u>121</u>	NOTICE of Attorney Appearance by Forrest Lee Andrews on behalf of City of Miami (Andrews, Forrest) (Entered: 11/02/2023)
11/06/2023	<u>122</u>	NOTICE of Attorney Appearance by Daniel Lucas Marshall on behalf of Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Attorney Daniel Lucas Marshall added to party Latoyla Yasheen Cooper–Levy(pty:pla), Attorney Daniel Lucas Marshall added to party Sherman Rivers(pty:pla), Attorney Daniel Lucas Marshall added to party Joseph Simmons(pty:pla), Attorney Daniel Lucas Marshall added to party Phillip Sylverin(pty:pla). (Marshall, Daniel) (Entered: 11/06/2023)
11/07/2023	<u>123</u>	NOTICE of Attorney Appearance by Forrest Lee Andrews on behalf of City of Miami (Andrews, Forrest) (Entered: 11/07/2023)
12/06/2023	<u>124</u>	NOTICE of Attorney Appearance by Marguerite Clare Racher Snyder on behalf of City of Miami. Attorney Marguerite Clare Racher Snyder added to party City of Miami(pty:dft). (Snyder, Marguerite) (Entered: 12/06/2023)
12/11/2023	<u>125</u>	NOTICE of Attorney Appearance by Stephen Hunter Johnson on behalf of City of Miami. Attorney Stephen Hunter Johnson added to party City of Miami(pty:dft). (Johnson, Stephen) (Entered: 12/11/2023)
12/11/2023	<u>126</u>	OMNIBUS ORDER ON MOTIONS FOR SUMMARY JUDGMENT; denying <u>79</u> Motion for Partial Summary Judgment; denying <u>82</u> Motion for Summary Judgment. Signed by Judge Beth Bloom on 12/11/2023. <i>See attached document for full details.</i> (nwn) (Entered: 12/12/2023)
12/12/2023	<u>127</u>	ORDER Setting Hearing on Motion <u>92</u> MOTION in Limine , <u>90</u> Amended MOTION in Limine : Motion Hearing set for 1/9/2024 02:00 PM in Miami Division before Judge Beth Bloom. Signed by Judge Beth Bloom on 12/12/2023. <i>See attached document for full details.</i> (nwn) (Entered: 12/13/2023)
12/17/2023	<u>128</u>	Unopposed MOTION/PETITION for Writ of Habeas Corpus ad Testificandum on Lee Packer, Administrator, South Florida Evaluation and Treatment Center by Latoyla Yasheen Cooper–Levy. (Attachments: # <u>1</u> Text of Proposed Order Proposed Writ)(Hearne, Jeffrey) (Entered: 12/17/2023)
12/18/2023	<u>129</u>	(DISSOLVED PER DE#160) Writ of Habeas Corpus ad Testificandum Issued as to Lee Packer, Administrator, South Florida Evaluation and Treatment Center. This is to command you in charge of the person Latoyla Cooper to deliver this person to the United States Courthouse located at 400 North Miami Avenue, Courtroom 10–2, Miami, Florida at 9:00 a.m. on Tuesday, January 16, 2024, for the purpose of appearing at her jury trial. Signed by Judge Beth Bloom on 12/18/2023. <i>See attached document for full details.</i> (nwn) Modified text on 1/4/2024 (nwn). (Entered: 12/18/2023)
12/18/2023	<u>130</u>	NOTICE by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin of <i>Rule 26(a)(3)A) Pretrial Disclosures</i> (Hearne, Jeffrey) (Entered: 12/18/2023)
12/18/2023	<u>131</u>	Defendant's NOTICE by City of Miami <i>Rule 26(a)(3)A) Pre–trial Disclosures</i> (Andrews, Forrest) (Entered: 12/18/2023)
12/19/2023	<u>132</u>	Unopposed MOTION to Appear by Zoom at Calendar Call and Motions in Limine re <u>127</u> Order Setting Hearing on Motion, <u>120</u> Order on Motion for Clarification, Order on Motion for Extension of Time by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Siegel, Jodi) (Entered: 12/19/2023)
12/19/2023	133	PAPERLESS ORDER granting <u>132</u> Motion for Counsel to Appear by Zoom Videoconference for Calendar Call and Motions in Limine.  Calendar Call set for 1/10/2024 01:30 PM in Miami Division before Judge Beth Bloom. The parties may join remotely via ZoomGov Meeting at <a href="https://www.zoomgov.com/j/1615913558?pwd=amUza1NGeVhkUk1tek9HYUxneHRtdz09">https://www.zoomgov.com/j/1615913558?pwd=amUza1NGeVhkUk1tek9HYUxneHRtdz09</a> (Meeting ID: 161 591 3558 Passcode: 364059).  Jury Trial set for 1/16/2024 09:00 AM in Miami Division before Judge Beth Bloom.



		Signed by Judge Beth Bloom (jg01) (Entered: 12/19/2023)
12/19/2023	<u>134</u>	ORDER ON UNOPPOSED PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM. Granting <u>128</u> Unopposed MOTION/PETITION for Writ of Habeas Corpus ad Testificandum on Lee Packer, Administrator, South Florida Evaluation and Treatment Center filed by Latoyla Yasheen Cooper-Levy. Signed by Judge Beth Bloom on 12/18/2023. <i>See attached document for full details.</i> (nwn) (Entered: 12/19/2023)
12/19/2023	135	VACATED NOTICE of Hearing on Motion <b>**TIME CHANGE ONLY**</b> <u>92</u> MOTION in Limine , <u>90</u> Amended MOTION in Limine : Motion Hearing set for 1/10/2024 01:30 PM in Miami Division before Judge Beth Bloom. The parties may join remotely via ZoomGov Meeting at <a href="https://www.zoomgov.com/j/1615913558?pwd=amUza1NGeVhkUk1tek9HYUXneHRtdz09">https://www.zoomgov.com/j/1615913558?pwd=amUza1NGeVhkUk1tek9HYUXneHRtdz09</a> (Meeting ID: 161 591 3558 Passcode: 364059). (jg01) Modified to vacate per 137 on 12/20/2023 (ego). (Entered: 12/19/2023)
12/20/2023	136	PAPERLESS NOTICE of Hearing on Motion <u>92</u> MOTION in Limine , <u>90</u> Amended MOTION in Limine : Motion Hearing set for 1/10/2024 at 01:30 PM in Miami Division before Judge Beth Bloom. The parties may join remotely. The link to join the Zoom video conference is: <a href="https://www.zoomgov.com/j/16191705654?pwd=WmlmK0RpelQ5bUZhdTVGM3RUMHZoUT09">https://www.zoomgov.com/j/16191705654?pwd=WmlmK0RpelQ5bUZhdTVGM3RUMHZoUT09</a> Alternatively, the Meeting ID for this Hearing is 161 9170 5654 and the Passcode is: 692150.(ego) (Entered: 12/20/2023)
12/20/2023	137	Clerk's Notice of Docket Correction re 135 Notice of Hearing on Motion,. <b>Vacated Due to Error;</b> The correct Notice has been entered as ECF 136 . (ego) Modified text on 12/20/2023 (ego). (Entered: 12/20/2023)
12/20/2023	<u>138</u>	Defendant's MOTION to Bring Electronic Equipment into the courtroom <i>MOTION FOR PERMISSION TO UTILIZE ELECTRONIC EQUIPMENT IN THE COURTROOM DURING TRIAL AND FOR SECURITY CLEARANCE OF EQUIPMENT</i> by City of Miami. Responses due by 1/3/2024 (Attachments: # <u>1</u> Text of Proposed Order Proposed Order for Defendant's Motion to Use Electronic Equipment)(Andrews, Forrest) (Entered: 12/20/2023)
12/22/2023	<u>139</u>	ORDER ON MOTION TO UTILIZE ELECTRONIC EQUIPMENT; granting <u>138</u> Motion to Bring Electronic Equipment into the courtroom. Signed by Judge Beth Bloom on 12/21/2023. <i>See attached document for full details.</i> (nwn) (Entered: 12/22/2023)
12/22/2023	<u>140</u>	NOTICE by City of Miami <i>AMENDED DEPOSITION DESIGNATIONS FOR TRANSCRIPT OF WILLIAM A. PORRO</i> (Andrews, Forrest) (Entered: 12/22/2023)
12/22/2023	<u>141</u>	NOTICE by City of Miami <i>AMENDED DEPOSITION DESIGNATIONS FOR TRANSCRIPT OF SERGIO TORRES</i> (Andrews, Forrest) (Entered: 12/22/2023)
12/22/2023	<u>142</u>	NOTICE by Latoyla Yasheen Cooper-Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin <i>Deposition Designations</i> (Attachments: # <u>1</u> Designation Transcript of Natasha Colebrooke-Williams, # <u>2</u> Designation Transcript of Christian Candalier, # <u>3</u> Designation Transcript of Vivian Collins, # <u>4</u> Designation Transcript of Latoyla Cooper-Levy, # <u>5</u> Designation Transcript of Audrey Delricho, # <u>6</u> Designation Transcript of Jamille Jackson, # <u>7</u> Designation Transcript of Leighton McClean, # <u>8</u> Designation Transcript of Sherman Rivers, # <u>9</u> Designation Transcript of David Rosemond, # <u>10</u> Designation Transcript of Wade Sanders, # <u>11</u> Designation Transcript of Joseph Simmons, # <u>12</u> Designation Transcript of Phillip Sylverin, # <u>13</u> Designation Transcript of Odell Wiggins) (Hearne, Jeffrey) (Entered: 12/22/2023)
12/22/2023	<u>143</u>	NOTICE by City of Miami (Attachments: # <u>1</u> Deposition Designation – Sanders, # <u>2</u> Amended Deposition Designation – Chin-Quee, # <u>3</u> Amended Deposition Designation – Rosemond, # <u>4</u> Amended Deposition Designation – Colebrooke, # <u>5</u> Deposition Designation – Jackson, # <u>6</u> Amended Deposition Designation – Vera, # <u>7</u> Amended Deposition Designation – Collins, # <u>8</u> Amended Deposition Designation – McLean, # <u>9</u> Amended Deposition Designation – Candalier, # <u>10</u> Amended Deposition Designation – Trueba, # <u>11</u> Amended Deposition Designation – Morrison, # <u>12</u> Amended Deposition Designation – Wiggins) (Andrews, Forrest) (Entered: 12/22/2023)
12/22/2023	<u>144</u>	NOTICE by City of Miami <i>Notice of Filing Deposition Transcripts</i> (Attachments: # <u>1</u> Transcripts Deposition Transcript – Colebrooke, # <u>2</u> Transcripts Deposition Transcript – Candalier, # <u>3</u> Transcripts Deposition Transcript – Collins, # <u>4</u> Transcripts Deposition Transcript – Jackson, # <u>5</u> Transcripts Deposition Transcript – McLean, # <u>6</u> Transcripts Deposition Transcript – Morrison, # <u>7</u> Transcripts Deposition Transcript – Porro, # <u>8</u> Transcripts Deposition Transcript – Rosemond, # <u>9</u> Transcripts Deposition Transcript – Sanders, # <u>10</u> Transcripts Deposition Transcript – Torres, # <u>11</u> Transcripts Deposition Transcript – Trueba, # <u>12</u> Transcripts Deposition Transcript – Vera, # <u>13</u>

		Transcripts Deposition Transcript – Wiggins, # <u>14</u> Transcripts Deposition Transcript – Chin–Queen) (Andrews, Forrest) (Entered: 12/22/2023)
12/28/2023	<u>145</u>	Unopposed MOTION for Extension of Time to file pretrial materials in second order of instructions before calendar call re <u>120</u> Order on Motion for Clarification, Order on Motion for Extension of Time by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Responses due by 1/11/2024 (Attachments: # <u>1</u> Text of Proposed Order)(Hearne, Jeffrey) (Entered: 12/28/2023)
12/28/2023	<u>146</u>	PAPERLESS ORDER granting <u>145</u> Motion for Extension of Time. Pretrial Stipulation and Plaintiffs' materials identified in the Second Order of Instructions Before Calendar Call, including the objections and counter–designations to the deposition Designations, due by 1/3/2024. Signed by Judge Beth Bloom (jg01) (Entered: 12/28/2023)
12/29/2023	<u>147</u>	MOTION for clarification by City of Miami. Attorney Joshua Quetglas added to party City of Miami(pty:dft). Responses due by 1/12/2024 (Attachments: # <u>1</u> Order)(Quetglas, Joshua) (Entered: 12/29/2023)
12/29/2023	<u>148</u>	PAPERLESS ORDER granting <u>147</u> Motion for Clarification. The December 29, 2023 deadline contained in the <u>120</u> Second Order of Instructions before Calendar Call is extended as to both Plaintiffs and Defendant to allow all materials and pleadings from both parties to be submitted on or before January 3, 2024. Signed by Judge Beth Bloom (jg01) (Entered: 12/29/2023)
01/03/2024	<u>149</u>	Unopposed MOTION/PETITION for Writ of Habeas Corpus ad Testificandum on on Sherea Green, Director, Miami–Dade Corrections by Latoyla Yasheen Cooper–Levy. (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Text of Proposed Order Proposed Writ)(Hearne, Jeffrey) (Entered: 01/03/2024)
01/03/2024	<u>150</u>	MOTION to Allow Plaintiff Cooper–Levy to Attend Trial Unshackled and in Non–Jail Clothing by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Hearne, Jeffrey) (Entered: 01/03/2024)
01/03/2024	<u>151</u>	Defendant's NOTICE OF FILING OBJECTIONS TO PLAINTIFFS DEPOSITION DESIGNATIONS AND COUNTER–DESIGNATIONS by City of Miami (Attachments: # <u>1</u> Objection and Counter–Designation–Cooper–Levy, # <u>2</u> Objection and Counter–Designation–Sylverin, # <u>3</u> Objection and Counter–Designation–Delricho, # <u>4</u> Objection and Counter–Designation–Wiggins, # <u>5</u> Objection and Counter–Designation–Candalier, # <u>6</u> Objection and Counter–Designation–Jackson, # <u>7</u> Objection and Counter–Designation–Rosemond, # <u>8</u> Objection and Counter–Designation–McLean, # <u>9</u> Objection and Counter–Designation to Transcript–Simmons, # <u>10</u> Objection and Counter–Designation to Transcript–Colebrooke, # <u>11</u> Objection and Counter–Designation to Transcript–Rosemond, # <u>12</u> Objection and Counter–Designation to Transcript–Sanders) (Andrews, Forrest) (Entered: 01/03/2024)
01/03/2024	<u>152</u>	DEFENDANT CITY OF MIAMIS OBJECTIONS TO PLAINTIFFS TRIAL EXHIBIT LIST to <u>130</u> Notice (Other) by City of Miami. (Andrews, Forrest) (Entered: 01/03/2024)
01/03/2024	<u>153</u>	Proposed Voir Dire Questions by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Hearne, Jeffrey) (Entered: 01/03/2024)
01/03/2024	<u>154</u>	Joint NOTICE of Neutral Statement of Case and List of Witnesses for Venire Panel by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin (Hearne, Jeffrey) (Entered: 01/03/2024)
01/03/2024	<u>155</u>	PRETRIAL STIPULATION (JOINT) by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin (Hearne, Jeffrey) (Entered: 01/03/2024)
01/03/2024	<u>156</u>	Proposed Jury Instructions by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Hearne, Jeffrey) (Entered: 01/03/2024)
01/03/2024	<u>157</u>	NOTICE of Plaintiffs' Objections and Counter–Designations to Defendant's Deposition Designations by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin re <u>140</u> Notice (Other), <u>116</u> Notice (Other),, <u>143</u> Notice (Other),, <u>141</u> Notice (Other) (Hearne, Jeffrey) (Entered: 01/03/2024)
01/03/2024	<u>158</u>	Exhibit List (Joint) by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin.. (Hearne, Jeffrey) (Entered: 01/03/2024)
01/03/2024	<u>159</u>	Witness List (JOINT) by Latoyla Yasheen Cooper–Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin.. (Hearne, Jeffrey) (Entered: 01/03/2024)

01/03/2024	<u>160</u>	ORDER ON UNOPPOSED PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM AND DISSOLVING PRIOR WRIT ECF No. <u>129</u> ; granting <u>149</u> Motion for Writ of Habeas Corpus ad Testificandum. Signed by Judge Beth Bloom on 1/3/2024. <i>See attached document for full details.</i> (nwn) (Entered: 01/04/2024)
01/03/2024	<u>161</u>	WRIT OF HABEAS CORPUS AD TESTIFICANDUM AND DISSOLVING PRIOR WRIT. Writ of Habeas Corpus ad Testificandum Issued as to Latoyla Cooper. Jury Trial set for 1/16/2024 09:00 AM in Miami Division before Judge Beth Bloom. Signed by Judge Beth Bloom on 1/3/2024. <i>See attached document for full details.</i> (nwn) (Entered: 01/04/2024)
01/03/2024	<u>162</u>	ORDER ON MOTION TO ALLOW PLAINTIFF COOPER-LEVY TO ATTEND TRIAL UNSHACKLED AND IN NON-JAIL CLOTHING; granting in part <u>150</u> Motion to Allow Plaintiff Cooper-Levy to Attend Trial Unshackled and in Non-Jail Clothing. Signed by Judge Beth Bloom on 1/3/2024. <i>See attached document for full details.</i> (nwn) (Entered: 01/04/2024)
01/05/2024	<u>163</u>	Plaintiff's MOTION For Leave to Ask Leading Questions of City Witnesses on Direct Examination by Latoyla Yasheen Cooper-Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. (Siegel, Jodi) (Entered: 01/05/2024)
01/05/2024	<u>164</u>	MOTION to Strike <i>Undisclosed Witnesses and Prohibiting the Use of Late-Produced Evidence</i> by Latoyla Yasheen Cooper-Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Responses due by 1/19/2024 (Hearne, Jeffrey) (Entered: 01/05/2024)
01/05/2024	<u>165</u>	PAPERLESS ORDER requiring expedited response. The City is <b>ORDERED</b> to file a response to <u>164</u> MOTION to Strike <i>Undisclosed Witnesses and Prohibiting the Use of Late-Produced Evidence</i> filed by Latoyla Yasheen Cooper-Levy, Joseph Simmons, Sherman Rivers, Phillip Sylverin, and to <u>163</u> Plaintiff's MOTION For Leave to Ask Leading Questions of City Witnesses on Direct Examination filed by Latoyla Yasheen Cooper-Levy, Joseph Simmons, Sherman Rivers, Phillip Sylverin, <b>by January 8, 2024</b> . Signed by Judge Beth Bloom (jg01) (Entered: 01/05/2024)
01/05/2024		Set Deadline per DE#165 as to <u>163</u> Plaintiff's MOTION For Leave to Ask Leading Questions of City Witnesses on Direct Examination , <u>164</u> MOTION to Strike <i>Undisclosed Witnesses and Prohibiting the Use of Late-Produced Evidence</i> . Responses due by 1/8/2024. (scn) (Entered: 01/08/2024)
01/07/2024	<u>166</u>	Amended MOTION to Strike <i>Undisclosed Witnesses and Prohibiting the Use of Late-Produced Evidence</i> by Latoyla Yasheen Cooper-Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Responses due by 1/22/2024 (Hearne, Jeffrey) (Entered: 01/07/2024)
01/08/2024	<u>167</u>	Unopposed MOTION to Bring Electronic Equipment into the courtroom by Latoyla Yasheen Cooper-Levy, Sherman Rivers, Joseph Simmons, Phillip Sylverin. Responses due by 1/22/2024 (Attachments: # <u>1</u> Text of Proposed Order)(Hearne, Jeffrey) (Entered: 01/08/2024)
01/08/2024	<u>168</u>	RESPONSE in Opposition re <u>166</u> Amended MOTION to Strike <i>Undisclosed Witnesses and Prohibiting the Use of Late-Produced Evidence</i> filed by City of Miami. Replies due by 1/16/2024. (Andrews, Forrest) (Entered: 01/08/2024)
01/08/2024	<u>169</u>	RESPONSE in Opposition re <u>163</u> Plaintiff's MOTION For Leave to Ask Leading Questions of City Witnesses on Direct Examination filed by City of Miami. Replies due by 1/16/2024. (Andrews, Forrest) (Entered: 01/08/2024)
01/08/2024	<u>170</u>	MOTION to Strike <i>THE TESTIMONY OF PLAINTIFFS LATOYLA COOPER-LEVY AND JOSEPH SIMMONS</i> by City of Miami. Responses due by 1/22/2024 (Andrews, Forrest) (Entered: 01/08/2024)
01/09/2024	<u>171</u>	ORDER ON PLAINTIFF'S MOTION TO USE ELECTRONIC EQUIPMENT; granting <u>167</u> Motion to Bring Electronic Equipment into the courtroom. Signed by Judge Beth Bloom on 1/8/2024. <i>See attached document for full details.</i> (nwn) (Entered: 01/09/2024)
01/09/2024	<u>172</u>	NOTICE of Hearing on Motion <u>92</u> MOTION in Limine , <u>90</u> Amended MOTION in Limine , <u>166</u> Amended MOTION to Strike <i>Undisclosed Witnesses and Prohibiting the Use of Late-Produced Evidence</i> , <u>170</u> MOTION to Strike <i>THE TESTIMONY OF PLAINTIFFS LATOYLA COOPER-LEVY AND JOSEPH SIMMONS</i> : Motion Hearing set for 1/11/2024 at 01:30 PM in the Miami Division, 400 North Miami Avenue, Courtroom 10-2, before Judge Beth Bloom. The parties may join remotely. The link to join the Zoom video conference is: <a href="https://www.zoomgov.com/j/16191705654?pwd=WmlmK0RpelQ5bUZhdTVGM3RUMHZoUT09">https://www.zoomgov.com/j/16191705654?pwd=WmlmK0RpelQ5bUZhdTVGM3RUMHZoUT09</a> Alternatively, the Meeting ID for this Hearing is 161 9170 5654 and the Passcode is: 692150 (ego) (Entered: 01/09/2024)

01/09/2024	173	<p><b>PAPERLESS NOTICE of Hearing:</b> Calendar Call set for 1/11/2024 at 01:30 PM in the Miami Division, 400 North Miami Avenue, Courtroom 10–2, before Judge Beth Bloom.</p> <p>The parties may join remotely. The link to join the Zoom video conference is:  <a href="https://www.zoomgov.com/j/16191705654?pwd=WmlmK0RpelQ5bUZhdTVGM3RUMHZoUT09">https://www.zoomgov.com/j/16191705654?pwd=WmlmK0RpelQ5bUZhdTVGM3RUMHZoUT09</a>  Alternatively, the Meeting ID for this Hearing is 161 9170 5654 and the Passcode is: 692150. (ego)  (Entered: 01/09/2024)</p>
01/09/2024	<u>174</u>	<p>First MOTION to Seal <i>Plaintiff's Psychological Medical Exams</i> per Local Rule 5.4 by City of Miami. (Attachments: # <u>1</u> Text of Proposed Order Order Granting Motion to Seal) (Andrews, Forrest) (Entered: 01/09/2024)</p>
01/09/2024	175	<p>PAPERLESS ORDER granting <u>174</u> Motion to Seal Plaintiff's Psychological Medical Exams per Local Rule 5.4. Matter should remain sealed permanently. Signed by Judge Beth Bloom (BB) (Entered: 01/09/2024)</p>
01/10/2024	176	<p><b>PAPERLESS NOTICE of Hearing:</b> re <u>163</u> Plaintiff's MOTION For Leave to Ask Leading Questions of City Witnesses on Direct Examination , <u>92</u> MOTION in Limine , <u>90</u> Amended MOTION in Limine , <u>166</u> Amended MOTION to Strike <i>Undisclosed Witnesses and Prohibiting the Use of Late–Produced Evidence</i>, <u>170</u> MOTION to Strike <i>THE TESTIMONY OF PLAINTIFFS LATOYLA COOPER–LEVY AND JOSEPH SIMMONS</i></p> <p>Motions and Calendar Call set for 1/16/2024 AT 09:30 AM in the Miami Division, 400 North Miami Avenue, Courtroom 10–2, before Judge Beth Bloom. The parties may join remotely. The link to join the Zoom video conference is:  <a href="https://www.zoomgov.com/j/16191705654?pwd=WmlmK0RpelQ5bUZhdTVGM3RUMHZoUT09">https://www.zoomgov.com/j/16191705654?pwd=WmlmK0RpelQ5bUZhdTVGM3RUMHZoUT09</a>.  Alternatively, the Meeting ID for this Hearing is 161 9170 5654 and the Passcode is: 692150. (ego)  (Entered: 01/10/2024)</p>
01/10/2024		<p>SYSTEM ENTRY – Docket Entry 177 [misc] restricted/sealed until further notice. (1087605) (Entered: 01/10/2024)</p>

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO.**

**LATOYLA YASHEEN COOPER-LEVY,  
PHILLIP SYLVERIN, SHERMAN RIVERS,  
JOSEPH SIMMONS,**

**PLAINTIFFS,**

**v.**

**CITY OF MIAMI,**

**DEFENDANT.**

\_\_\_\_\_ /

**COMPLAINT AND DEMAND FOR JURY TRIAL**

**Preliminary Statement**

1. For two decades, the City of Miami (“City”) was under the Pottinger consent decree, which regulated how the City interacted with its homeless residents. The consent decree was in response to what the City admitted in court was its “practice of criminalizing homelessness and the systematic disposal of homeless persons’ property.” The City of Miami’s Motion for Termination, Or, Alternatively, Modification of the Pottinger Consent Decree (“Motion”), *Pottinger v. City of Miami*, No. 1:88-cv-2406-FAM (S.D. Fla.), Docket Entry (“DE”) 566:10. In particular, the consent decree prohibited the City from unlawfully taking personal property belonging to homeless individuals. In 2019, the federal court terminated the consent decree, holding that “the City substantially complied with the Consent Decree’s property provisions” by storing and protecting personal property. *Pottinger v. City of Miami*, 359 F. Supp. 3d 1177, 1199 (S.D. Fla. 2019), *aff’d sub nom. Peery v. City of Miami*, 977 F.3d 1061 (11th Cir. 2020). Now,

despite its assurances to the court that judicial oversight was no longer needed because the City's "policy of harassment has been replaced with one of compassion," Motion, DE 566:25, the City is routinely seizing and destroying the personal property of its homeless residents.

2. Plaintiffs Latoyla Yasheen Cooper-Levy, Phillip Sylverin, Sherman Rivers, and Joseph Simmons bring this action to challenge the City of Miami's practice of seizing and destroying the personal property of homeless individuals.

3. The City conducts sweeps without sufficient notice and in a manner that prevents Plaintiffs from securing their personal property to avoid destruction. These sweeps are still occurring today.

4. When conducting the sweeps, the City often gives homeless individuals only a few minutes to move their belongings. If the person cannot move their personal property, the City removes and destroys it. If the individual is not present during the sweep, the City removes and destroys the personal property without giving them any means to secure or retrieve their personal possessions.

5. The City's actions deprived Plaintiffs of personal property critical to their survival, such as government-issued identification documents, medication, and clothing, as well as irreplaceable personal possessions.

6. The intentional taking and destruction of Plaintiffs' personal property violates Plaintiffs' constitutional right to be free from unreasonable seizure and their right to due process.

7. Plaintiffs seek injunctive relief enjoining the City from taking and destroying homeless individuals' personal property in violation of the United States Constitution. Plaintiffs also seek a declaratory judgment that the City's policies and practices are unlawful under the Constitution.

8. Plaintiffs further seek damages resulting from the City's intentional destruction of their personal property.

### **Jurisdiction and Venue**

9. This action arises under the Fourth and Fourteenth Amendments to the United States Constitution. The Court has original jurisdiction over these claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3) & (4). Plaintiffs' claims for declaratory relief and injunctive relief are authorized under 28 U.S.C. §§ 2201-02 and 42 U.S.C. § 1983. At all times relevant to this action, Defendant and its officers, employees, and agents acted under color of state law.

10. Venue is proper in the Southern District of Florida, Miami Division, pursuant to 28 U.S.C. § 1391(b). All the acts and omissions identified in this complaint occurred in the City of Miami, Miami-Dade County, Florida, which falls within the Miami Division of the Southern District of Florida.

### **Parties**

11. Plaintiff Latoyla Yasheen Cooper-Levy is a resident of Miami and homeless at all relevant times.

12. Plaintiff Phillip Sylverin is a resident of Miami and homeless at all relevant times.

13. Plaintiff Joseph Simmons is a resident of Miami and homeless at all relevant times.

14. Plaintiff Sherman Rivers is a resident of Miami and homeless at all relevant times.

15. Defendant City of Miami is a municipality, duly organized and existing under the laws of the State of Florida, with the capacity to sue and be sued.

## **Factual Allegations**

### **Background**

16. Most of the unsheltered individuals in Miami-Dade County live in the City of Miami. The Point-In-Time census conducted by the Miami-Dade County Homeless Trust in January 2021 found 892 unsheltered individuals, and 555 of them lived in the City of Miami.

17. The *Pottinger* consent decree required the City to “respect the personal property of all homeless people,” including not only “any personal property known to belong to a homeless person,” but also “any personal property ... readily recognizable as property of a homeless person (i.e., bedding, clothing, or other belongings organized or packaged together in a way indicating it had not been abandoned).” It also required all City departments to “follow their own internal procedures for taking custody of personal property.” *Pottinger*, 359 F. Supp. 3d at 1188.

18. Shortly before the district court terminated the *Pottinger* consent decree in February 2019, the City adopted an Administrative Policy regarding the Treatment of Homeless Persons’ Property (APM-1-19). (Exhibit A.)

19. APM-1-19 applies to all City employees, including outreach workers and public sanitation workers, as well as police officers except in case of conflict with Police Departmental Order 11, Chapter 10. (Exhibit A, at 1.)

20. Police Departmental Order 11, Chapter 10 (“PDO 11, Ch. 10”) instructs officers to “respect the personal property of homeless persons” and further states that “in no event shall any law enforcement officer destroy any personal property known to a homeless person, or readily recognizable as property of a homeless person. (Exhibit B, at 4.)



21. Once the district court terminated the *Pottinger* consent decree in February 2019, the City was no longer under court enforcement of the consent decree or under court oversight as to how it treats the homeless.

22. Beginning in early 2021, the City began an aggressive plan to clear homeless encampments within the City of Miami.

23. The City drafted a “Street Clean Up and Encampment Resource Plan” which proposed to close homeless encampments by conducting ongoing sweeps. (Exhibit C.)

24. In April 2021, the City Commission enacted a resolution directing the City Manager to facilitate bi-weekly cleanings of homeless encampments.

25. In September 2021, the City Commission enacted a resolution directing the City Manager to facilitate the cleanings of homeless encampments at least three times a week.

26. Homeless individuals living on the street often own personal property, including tents, clothing, shoes, personal hygiene products, medication, government-issued identification, and other important documents.

27. When conducting sweeps, City staff, including those from the Homeless Outreach Team, the Police Department, and Solid Waste, arrive at the encampments along with dump trucks.

28. The City staff instruct homeless individuals who are present to move their personal property within a few minutes.

29. Some homeless individuals are not present when the City arrives because they are working, showering, visiting social service agencies, or tending to other matters. These individuals are not given an opportunity to move their personal property.

30. After giving the homeless individuals a few minutes to move their personal property, the City then removes all personal property remaining at the encampment.

31. The City often uses a crane to pick up the personal property, places it in the back of a dump truck, and then disposes of the personal property.

### **The City's Practice and Custom**

32. The City's practice and custom of how it treats the personal property of homeless individuals differs from the written policy outlined in APM-1-19 and PDO 11, Ch. 10.

33. The City provides inadequate notice of the sweeps. The City's inadequacies include: posting notices identifying the date of the proposed sweep, but conducting the sweep on a different day than the one identified on the notice; posting notices that do not include the time of the sweep; posting notices with less than 24 hours' notice; posting notices that do not identify any date of the sweep; and conducting sweeps without any written notice.

34. It is the City's practice and custom to provide insufficient notice to homeless residents when it conducts sweeps.

35. The City's practice and custom is to seize and destroy personal property belonging to homeless individuals.

36. The City does not sort the personal property or attempt to secure personal items such as identification, medicines and eyeglasses, and other small items of importance identified by the homeless person or readily identifiable as vital or significant personal property.

37. The City does not determine whether unattended items are readily recognizable as personal property of a homeless person.

38. The City does not determine whether the personal property is contaminated or poses a health or safety hazard.

39. The City does not have a warrant when it conducts the sweeps. APM-1-19 requires City staff to complete an Inventory Storage Form for any personal property it seizes and attempt to notify the property's owner.

40. Between January 1, 2021, and April 2022, City of Miami staff only completed two Inventory / Storage Invoices.

41. Between January 1, 2021, and April 2022, the City of Miami only made one attempt to notify a homeless person that the City had stored personal property and that the owner could pick up the personal property.

42. The City's practice and custom is to seize and destroy the personal property belonging to homeless individuals, rather than to inventory and store the personal property and provide an opportunity for the owner to recover the personal property.

43. The City's practice and custom of seizing and destroying personal property erroneously deprives homeless individuals of their personal property.

44. The City's officials, employees, and agents acted under color of law when they seized and destroyed the personal property belonging to homeless individuals.

### **Destruction of Plaintiffs' Property**

#### *Latoyla Cooper-Levy*

45. In May 2021, Latoyla Yasheen Cooper-Levy ("Cooper-Levy") had been living at the homeless encampment located at Northwest 17 Street and 7<sup>th</sup> Avenue for approximately three years.

46. One day in May 2021, Cooper-Levy left the encampment to attend orientation for a job to which she had recently been hired.

47. Cooper-Levy did not abandon her property. Her property was readily recognizable as personal property of a homeless person and was inside her tent, organized in a way indicating it had not been abandoned.

48. While she was gone, the City conducted a sweep of the encampment.

49. Cooper-Levy did not receive any notice the City would conduct a sweep on that date and at that time.

50. When Cooper-Levy returned to the encampment, she found the City had removed her personal property and the personal property of other homeless individuals.

51. Cooper-Levy's personal property, which was not abandoned, was not contaminated, and did not pose a health hazard or safety issue.

52. The City destroyed her U.S. passport, birth certificate, Social Security card, identification, telephone, clothing, work uniform, shoes, a sleeping tent, and an urn containing her mother's ashes.

53. Because the City took her uniform and she was unable to purchase a new uniform, Cooper-Levy lost her job.

54. After returning to the encampment, Cooper-Levy found a notice from the City under a brick which contained information about how to retrieve stored property.

55. However, when Cooper-Levy went to the location indicated on the notice, City staff told her they did not have any of her belongings.

56. The City made no attempt to save items that belonged to her, made no attempt to determine if her property was contaminated or contained dangerous items, and made no offer to store her property. Instead, the City irrevocably seized and destroyed her property.

57. Cooper-Levy is currently homeless and is fearful that the City will seize and destroy her personal property without notice again.

58. Cooper-Levy suffered damages from the City's actions, including the loss of her destroyed personal property and garden-variety emotional distress.

*Phillip Sylverin*

59. In August 2021, Phillip Sylverin ("Sylverin") had been living in an encampment on NW 11th Street near or under the I-95 bridge for approximately 3 years.

60. Mr. Sylverin has been homeless for about 4 years.

61. On or about August 2, 2021, at approximately 9:00 am the City arrived at the encampment and instructed Sylverin to take everything he could carry or it would be thrown out.

62. Sylverin did not receive any notice the City would conduct a sweep on that date and at that time. He did not know about the sweep until City employees arrived and the City employees only gave him a few minutes to move his property.

63. Sylverin uses a wheelchair for mobility and he was unable to move most of his personal property within the limited time given by the City.

64. City employees used a crane to place his personal property into a dump truck including his tent, identification documents, furniture, and family photos. His pet cat was inside the tent when the City placed it in the dump truck and was presumably killed.

65. Sylverin was unable to carry away or salvage any of his belongings. The only personal property he had left was what he was wearing and his wheelchair.

66. Sylverin's personal property, which was not abandoned, was not contaminated, nor did it pose a health hazard or safety issue.

67. The City made no attempt to save items that belonged to him, made no attempt to determine if his property was contaminated or contained dangerous items, and made no offer to store his property. Instead, the City irrevocably seized and destroyed his personal property.

68. Sylverin is currently homeless and is fearful that the City will seize and destroy his personal property without notice again.

69. Sylverin suffered damages from the City's actions, including the loss of his destroyed personal property and garden-variety emotional distress.

*Sherman Rivers*

70. In August 2021, Sherman Rivers ("Rivers") resided in the encampment located under the bridge on NW 11<sup>th</sup> Street between NW 5<sup>th</sup> Avenue and NW 3<sup>rd</sup> Avenue.

71. Rivers has been homeless for about 30 years.

72. On or about August 2, 2021, at approximately 9:00 am, the City arrived at the encampment, but Rivers was at work when the City arrived.

73. Rivers did not abandon his property. His property was readily recognizable as property of a homeless person, and it was organized in a way indicating it had not been abandoned. Most of his personal property was inside his tent.

74. Rivers did not receive any notice the City would conduct a sweep on that date and at that time.

75. When Rivers returned to the encampment, he found the City had removed his personal property.

76. City employees used a crane to place his personal property into a dump truck including his tent, birth certificate, identification, public benefits cards, prescription medications, new clothing, shoes, a bike, toiletries, and \$60 in change.

77. Rivers' personal property, which was not abandoned, was not contaminated, and it did not pose a health hazard or safety issue.

78. The City made no attempt to save items that belonged to him, made no attempt to determine if his personal property was contaminated or contained dangerous items, and made no offer to store his personal property. Instead, the City irrevocably seized and destroyed his property.

79. On at least four other occasions, the City has seized and destroyed his personal property while he was at work.

80. Rivers is currently homeless, and he is fearful that the City will continue to seize and destroy his belongings without notice.

81. Rivers suffered damages from the City's actions, including the loss of destroyed personal property and garden-variety emotional distress.

*Joseph Simmons*

82. In August 2021, Joseph Simmons ("Simmons") resided in the encampment located under the bridge on NW 11<sup>th</sup> Street between NW 5th Avenue and NW 3rd Avenue. He has been homeless for about 3 years.

83. During a sweep that occurred on or about August 2, 2021, at approximately 9:00 a.m., the City arrived at the encampment and instructed Simmons to take everything he could carry, or it would be thrown out.

84. City employees threw Simmons' personal belongings into a dump truck, including his tent, clothes, furniture, medication, glasses, dentures, identification documents, coin and stamp collections, and jewelry. Most of his personal property was inside his tent.

85. Simmons did not receive any notice the City would conduct a sweep on that date and at that time. He did not know about the sweep until City employees arrived and was only given a few minutes to move his property.

86. Simmons did not have sufficient time to protect his property, and he was unable to salvage any of his belongings. The only personal property he had left was the clothes he was wearing.

87. Simmons' property, which was not abandoned, was not contaminated and did not pose a health hazard or safety risk.

88. The City made no attempt to save items that belonged to him, made no attempt to determine if his property was contaminated or contained dangerous items, and made no offer to store his property. Instead, the City irrevocably seized and destroyed his property.

89. On approximately 19 other occasions, the City has seized and destroyed his personal property.

90. Simmons is currently homeless and is fearful that the City will seize and destroy his belongings without notice again.

91. Simmons suffered damages from the City's actions, including the loss of his destroyed personal property and garden-variety emotional distress.

**First Claim for Relief**

Denial of Constitutional Right against Unreasonable Seizure  
United States Constitution, Fourth and Fourteenth Amendments

92. Plaintiffs incorporate and reallege by reference paragraphs 16-91.

93. Plaintiffs have a right to be free from unreasonable seizures under the Fourth and Fourteenth Amendments to the United States Constitution.



94. Plaintiffs had a clearly established possessory interest in their personal property, and that interest is reasonable and legitimate.

95. By seizing and destroying Plaintiffs' property, Defendant meaningfully interfered with Plaintiffs' possessory interests and seized Plaintiffs' property in violation of the Fourth and Fourteenth Amendments.

96. Defendant acted under color of law in destroying Plaintiffs' property.

97. Defendant's above-described practices and conduct violate Plaintiffs' right to be free from unreasonable seizures under the Fourth and Fourteenth Amendments to the United States Constitution.

98. Defendant has a persistent and widespread practice and custom of seizing and destroying the property of homeless individuals.

99. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy and law, and they have been directly damaged because of the City's conduct.

**Second Claim for Relief**

Denial of Constitutional Right to Due Process of Law  
United States Constitution, Fourteenth Amendment

100. Plaintiffs incorporate and reallege by reference paragraphs 16-91.

101. Plaintiffs have a constitutionally protected interest in their personal property.

102. Defendant seized and destroyed Plaintiffs' personal property with no notice, or with constitutionally inadequate notice.

103. Defendant has a persistent and widespread practice and custom of seizing and destroying the personal property of homeless individuals without adequate notice.

104. Defendant seized Plaintiffs' personal property without providing a meaningful opportunity for Plaintiffs to challenge the deprivation of property.

105. Defendant has a persistent and widespread practice and custom of seizing the personal property of homeless individuals without providing a meaningful opportunity to challenge the deprivation.

106. Defendant irrevocably deprived Plaintiffs of their personal property by destroying it without constitutionally adequate due process.

107. Defendant has a persistent and widespread practice and custom of destroying the personal property of homeless individuals without adequate due process.

108. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy and law and they have been directly damaged by the City's conduct.

109. Defendant acted under color of law in destroying Plaintiffs' property. Defendant's above-described custom, practices, and conduct violate Plaintiffs' right to due process of law under the Fourteenth Amendment to the United States Constitution.

### **Jury Demand**

Plaintiffs demand a jury trial on all issues so triable.

### **Prayer for Relief**

WHEREFORE, Plaintiffs seek relief from this Court as follows:

- A. Injunctive relief enjoining Defendant from repeating the unlawful policies, practices, and conduct, specifically that Defendant be enjoined from any future confiscation and destruction of Plaintiffs' property absent a lawful justification accompanied by proper notice, a reasonable opportunity to be heard, and other due-process protections;
- B. Declaratory judgment that Defendant's policies, practices and conduct violated Plaintiffs' rights under the Fourth and Fourteenth Amendments of the United States Constitution;
- C. Damages in an amount according to proof;

D. Attorneys' fees and costs as provided by law; and

E. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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POLICY NUMBER:

## CITY OF MIAMI

REVISIONS

REVISED  
SECTION  
CreatedDATE OF  
REVISION  
01/14/2019APM- 1- 19

DATE:

1/14/2019

ISSUED BY:

*Emilio T. Gonzalez*  
City Manager/Designee  
SIGNATUREADMINISTRATIVE  
POLICY**SUBJECT: TREATMENT OF HOMELESS PERSONS' PROPERTY****Purpose**

The purpose of this policy is to establish a standard practice for the handling, temporary storage, and disposition of property belonging to homeless persons.

**Scope**

This Administrative Policy shall apply to all City employees, whether probationary, classified, unclassified, executive, temporary, or part-time, except employees of the Miami Police Department shall be bound by and follow the procedures set forth in Departmental Order 11 Chapter 10, or any existing Departmental Order addressing the treatment of homeless persons' property, to the extent there is any conflict between this Administrative Policy and any Departmental Order.

**Definitions**

- A. "Contaminated or Dangerous Items" are those items that present a hazard to the health and safety of City Personnel or the public. These items include, but are not limited to, hazardous materials, flammable materials (e.g., propane tanks), fabric contaminated with human or animal waste, fabric contaminated with flammable substances (e.g., oil or petroleum products), wet fabric (mold hazard), etc.
- B. "Homeless Person" shall mean a person who lacks a fixed, regular, and adequate night-time residence and has a primary night-time residency that is: (a) supervised publicly or privately operated shelter designed to provide temporary living accommodations; (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term "homeless person" does not include any person imprisoned or otherwise detained pursuant to an Act of



Congress or a state law. 42 U.S.C. §11301, et seq. (1994).

- C. "Homeless Person's Property" or "Homeless Property" shall mean personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e., bedding or clothing and other belongings organized or packaged together in a way indicating it has not been abandoned).

## Procedures

### I. General procedures:

1. City Personnel will attempt to secure personal items such as identification, medicines and eyeglasses and other small items of importance identified by the Homeless Person or readily identifiable as intimate personal property.
2. Notwithstanding anything herein:
  - a. Homeless Property that is contaminated or otherwise poses a health or safety concern to City Personnel or to members of the public may be disposed of.
  - b. The City is not responsible for taking custody of mattresses, upholstered furniture, or other bulky items on public property, and may dispose of those items.
  - c. Nothing herein prevents the disposal of items reasonably believed to be refuse.
  - d. The City may prohibit the presence of unattended property in specified areas where the presence of such unattended property poses a threat or risk to the public health or safety.

### II. Tagged/Labeled Homeless Persons' Property:

1. In order to aid the City in its ability to readily identify and handle the property of homeless persons, the City requires that all homeless individuals who wish to identify their personal property place a tag or label with their name and contact information (telephone and/or email) on the outside of any such property, such that City employees can easily identify the property as belonging to a specific individual and will have a means of contacting that individual with regard to any actions taken as to that property.
2. Whenever a City employee encounters unattended but tagged/labeled homeless persons' property, the following procedure shall be employed:
  - a. Any personal items such as identification, medicines and eyeglasses and other small items of importance readily identifiable as intimate personal property will be collected and held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed. An Inventory Storage Form will be completed by City personnel, and a copy of that

form will be provided to the Homeless Person by e-mail (if provided/available).

- b. Any items that are contaminated or otherwise pose a health hazard or obvious safety issue will be disposed of according to this policy.
- c. Any Homeless Property that does not appear to be contaminated or otherwise pose a health hazard or obvious safety issue, such as identification, clothing, bedding, photographs, personal papers, and keepsakes, will be collected and held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed. An Inventory Storage Form will be completed by City personnel, and a copy of that form will be provided to the Homeless Person by e-mail (if provided/available).
- d. Whenever possible, City personnel will photograph the homeless property prior to taking action.
- e. Following any such action described above, the City will attempt to contact the homeless individual identified on that tag/label to inform them of the disposition of their unattended property, and to notify them of any stored property and the method through which the homeless person can claim that property. Three (3) attempts at contact will be made. The City shall document any such attempts.

### **III. When a Homeless Person accepts voluntary placement in shelter:**

1. When a Homeless Person accepts placement in a shelter, City personnel will request the Homeless Person to secure the personal items that they wish to take to shelter with them. These items should include, at a minimum, any identification, medication, eyeglasses, and electronics in the homeless person's possession.
2. City personnel will request that the Homeless Person identify any of their remaining Homeless Property that they are willing to voluntarily discard. When a homeless person voluntarily agrees to discard property, they will be asked to sign a Waiver for Voluntary Disposal of Property Form.
3. Any remaining Homeless Property that cannot be taken to the shelter, which is not contaminated or does not otherwise pose a health hazard or obvious safety issue, will be documented, secured, and stored by City personnel. The Homeless Person will be required to sign an Inventory Storage Form, and a copy of that form will be provided to the Homeless Person. Any such stored property will be held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed.
4. Whenever possible, City personnel will photograph the homeless property prior to taking action.



**IV. During a Cleanup operation:**

1. All Cleanup operations will be coordinated by the Department of Human Services.
2. City personnel will place notices of Cleanup operation, at least seven (7) days prior to the cleaning date. The notice will inform individuals of the date of cleaning and will provide the phone number and address of the Veterans Affairs/Homeless Assistance Program Division in the Department of Human Services, where any collected Homeless Property can be retrieved.
3. Whenever possible, City personnel will photograph the Homeless Property prior to the Cleanup operation.
4. Cleanup operation when the Homeless Person is present:
  - a. City Personnel will inform the Homeless Person that the Cleanup is about to commence and request that they relocate themselves with their Homeless Property. These items should include, at a minimum, any identification, medication, eyeglasses, and electronics in the homeless person's possession.
  - b. City personnel will request that the Homeless Person identify any of their remaining Homeless Property that they are willing to voluntarily discard. When a homeless person voluntarily agrees to discard property, they will be asked to sign a Waiver for Voluntary Disposal of Property Form.
  - c. Any remaining Homeless Property that cannot be left on the site, which is not contaminated or does not otherwise pose a health hazard or obvious safety issue, shall be documented, secured, and stored by City personnel. The Homeless Person will be required to sign an Inventory Storage Form, and a copy of that form will be provided to the Homeless Person. Any such property will be held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed.
5. Cleanup operation when the Homeless Person is not present:
  - a. Any personal items such as identification, medicines and eyeglasses and other small items of importance readily identifiable as intimate personal property will be collected and held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed. An Inventory Storage Form will be completed by City personnel.
  - b. Any items that are contaminated or otherwise pose a health hazard or obvious safety issue will be disposed of according to this policy.
  - c. Any Homeless Property that does not appear to be contaminated or otherwise pose a health hazard or obvious safety issue, such as identification, clothing, bedding,



photographs, personal papers, and keepsakes, will be collected and held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed. An Inventory Storage Form will be completed by City personnel.

- d. If the property was tagged/labeled, the City will attempt to contact the individual identified as the property owner in the manner set forth in section II, above. If the property was not tagged/ labeled, the City will post a notice at the location of the property disposition, notifying the potential owner of the property that their property was either discarded or stored, and informing the reader of how to contact the City to discuss that property.

**V. Procedures for unattended and unidentified (untagged/unlabeled) Homeless Property:**

1. The Department of Human Service shall be contacted prior to City personnel taking action with respect to Homeless Property.
2. Any personal items such as identification, medicines and eyeglasses and other small items of importance readily identifiable as intimate personal property will be collected and held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed. An Inventory Storage Form will be completed by City personnel.
3. Any items that are contaminated or otherwise pose a health hazard or obvious safety issue will be disposed of according to this policy.
4. Any Homeless Property that does not appear to be contaminated or otherwise pose a health hazard or obvious safety issue, such as identification, clothing, bedding, photographs, personal papers, and keepsakes, will be collected and held for a period of ninety (90) days. An Inventory Storage Form will be completed by City personnel.

**VI. Storage Procedures**

1. The City homeless property storage site will be accessible by public transit or other means accessible to persons with low income.
2. When Homeless Property is collected by City personnel it should be labeled with the date of its removal and location from which it was removed to assist with its being reclaimed by its owners. Bags may be used to keep items collected from the same sites together.



City of Miami  
Street Clean Up & Encampment Resource Plan  
2021

## Mission and Vision

*To develop safe procedures so that communities in all five (5) districts are free of homeless encampments and debris while assisting those struggling with homeless by offering an easy transition to shelter and eventually more permanent housing.*

## Encampments and Homeless Clean Ups

### POPULATION – All Individuals and Families living on the street

The 2021 census counted 555 homeless individuals living on the street in the City of Miami, a 15% decrease from the 2020 count at 654.

The population of homeless persons in downtown Miami and in the City overall fluctuates throughout the year based on various factors. What remains a constant challenge, however, is the debris, trash and solid waste left behind by homeless persons who live on the streets and other public areas of the City not intended for human habitation. This includes human waste. The presence of human waste leads to an unsanitary environment and may also provide an environment for the spread of communicable diseases for both the homeless and surrounding residents and businesses.

The City of Miami currently provides homeless individuals assistance with placement into appropriate housing and/or shelter. The program provides outreach, assessment, placement, information, referral and transportation services to homeless individuals and families. The program also employs and trains formerly homeless men and women through the Downtown Development Authority (DDA) and a service provide and expect to hire 6-10 individuals to be involved in the clean-ups. All clean-up efforts will include the continuation of the outreach and resources provisions mentioned.

## PROJECT OVERVIEW

To address these concerns, the City coordinates (and continue to coordinate) clean-ups in collaboration with other City Departments. The expanded and enhanced clean-ups include participation from:

- City of Miami of Human Services Clean Up Coordinator (FTE)
- City of Miami Homeless Outreach (FTE)
- City of Miami Neighborhood Service Centers (FTE)
- City of Miami Department of Solid Waste (FTE)
- City of Miami Police
- City of Miami Code Compliance (FTE)
- City of Miami Department of Innovation and Technology (as needed)
- City of Miami Communications (as needed)
- City of Miami Commissioners Offices (as needed)
- The Homeless Trust & Providers (Camillus House, Chapman House, Lotus House, Citrus Health -as needed)
- Miami-Dade Florida Department of Health (as needed)
- City of Miami Downtown Development Authority (as needed)

**PROTOCOL**

The City of Miami has identified homeless hot spots in the City of Miami. Each hot spot will consist of two clean ups per week. During the clean ups overseen by the City's new Clean Up Coordinator, Homeless Outreach (Green Shirts) will offer shelter and resources to all individuals at each hot spot. Miami Police will address public access and enforcement. Department of Solid Waste will assist with street clean up and bulk pick up. The Department of Human Services will also deploy the Neighborhood Service Center teams to assist residents and business owners. The clean-ups will be conducted in accordance with the requirements of APM 1-19. The Department of Human Services will maintain a list of homeless encampment hot spots. (See Appendix A)

**Resources and Specialized Teams include the following:****Department of Human Services**

- 1 Clean Up Coordinator
- 4 Homeless Outreach (Green Shirts)
- 1 Neighborhood Service Center Administrator (or equivalent from Commissioner's Office)

**Department of Solid Waste**

- 6 Staff (Waste Collectors)
- 3 Service Center Pick-up Trucks
- Sanitation Truck + Operator
- HAWK (combination crane and dump truck) + Operator
- Street Sweeper + Operator
- Water Truck + Operator
- 6 Sanitizers + Equipment

**Police & Code Compliance**

- 2 Officers (Neighborhood Resource Officers)
- 1 Code Compliance Officer

**PLAN**

Schedule: Clean ups will be conducted 2 times per week by location or as frequently as needed. The required signage to alert the hot spot area will be posted seven (7) days prior to the clean-up. DHS Clean Up Coordinator is tasked with the responsibility of coordinating all clean ups related to homelessness in the City of Miami and documenting the posting of the notices. This employee is responsible for scheduling and coordinating all partners, teams and resources (internal and external). This individual will attend all clean ups and supervise. Green Shirts will visit the site daily over the course of the seven (7) day posting and provide assistance. We are recommending hiring two case managers (Licensed Clinical Social Workers, preferred). The sequencing of sites is prioritized by the negative impact they represent to the greatest number of residents and businesses in the area. Teams will be deployed based

on need. It is recommended that a given area is completely cleared of encampments before the next area is addressed. All clean-up sites requiring heavy machinery will be conducted on Wednesdays, with follow up visits within the following week. The sites listed below are the first set of clean ups of major encampments (please see Appendix B).

	Site	Date
1	Overtown (NW 17 Street)	Wednesday, Feb 10, 2021
2	Overtown (NW 13 Street & NW 11 Street)	Wednesday, Feb 17, 2021
3	Area around Miami Rescue Mission Building	Wednesday, Feb 24, 2021
4	Approach bridge between Downtown and Flagler	Wednesday, March 3, 2021

On the assigned day, significant number of beds through various shelter options will be made available. Outreach workers will arrive at the site in the morning and announce the start of the cleanup. Individuals will be interviewed by outreach workers, and basic information will be requested and documented. All individuals will be given a choice to be transported to shelter, process for relocation to another city (if they have relatives or friends who would accept them) or simply told they can no longer occupy the public-right-of-way or private property. Contaminated items will be discarded by the waste collectors.

Once the individuals have cleared the area and contaminated items are discarded, the area will be swept and properly disinfected for general and public use standards. These areas will be monitored by the cleanup coordinator, outreach workers and police officers to ensure these sites are not repopulated.

#### Homeless Trust Continuum of Care (CoC)

The Homeless Trust will work to direct existing resources for homeless individuals and serve as an enhancement to clean-ups and large group feedings. These are in locations where City of Miami Green Shirts are deployed regularly. These services targeted to unsheltered persons experiencing homelessness include:

- Homeless Engagement and Outreach
  - Information regarding housing programs and opportunities offered through the CoC
  - Outreach staff for Homeless Management Information System input, administration of Vulnerability Assessments and Homeless Verifications
  - Information on area services for showers, mail, meals
  - Identification Assistance
  - Information on services targeting homeless sub-population (domestic violence, youth, veterans)
  - Distribution of Homeless Helpline cards
- Health Services
  - Providing educational and prevention materials:
    - COVID-19 social distancing recommendations, prevention, signs and symptoms
    - Hepatitis A
    - West Nile Virus
    - Needle Exchange

- Information on area community health centers
- Participation of partners including Camillus Health Concern, IDEA Exchange, Florida Department of Health in Miami-Dade providing:
  - Distribution of disease prevention supplies as available (face coverings, wipes, hand sanitizer)
  - COVID-19 Screening and Testing
  - Hepatitis A Vaccination
  - HIV Testing
  - Mobile Health
- Mental Health and Substance Services
  - Information on area community mental/behavioral health centers, suicide prevention, etc., mental health and substance abuse counseling
  - On site mental health and substance abuse counseling
- Legal Services

#### Homeless Trust Community Education

The Homeless Trust offers web-based orientations and educational opportunities for community groups and individuals:

- The CoC Homeless System of Care
  - History, Structure and Accomplishments to Date
  - Miami-Dade CoC Housing Strategies to End Homelessness
  - Housing First Approach
  - Prevention
  - Diversion
  - Outreach and Specialized Outreach
  - Emergency Shelter
  - Landlord Recruitment and Retention through the RentConnect Program
  - Rapid Re-Housing
  - Permanent Supportive Housing
- Nutritional Needs of Homeless Persons and Healthy Meal Planning for Street Feedings
- Trauma-Informed Care and Harm Reduction

Law Enforcement: Miami Police will be present at all clean ups. Law enforcement will patrol areas after clean ups are completed. Miami Police and DHS will coordinate the attendance of Homeless staff at police roll calls to update police officers on the homeless services currently available. Police can recommend clients to the overnight bed. Clients in overnight beds will have priority to extended beds.

Sanitation: Six (6) staff designated to key areas (Overtown, Downtown and Little Havana). Staff will be equipped with chemical resistant safety suits and equipment to sanitize streets. They will oversee removing of human waste, as well as eliminating odor from the streets and sidewalks through sanitation efforts.

Cameras: Solid Waste will work with DHS and provide ten (10) cameras. Solid Waste, Miami Police and DHS will coordinate the monitoring of camera footage for illegal dumping and related Solid Waste



violations. The purpose of the cameras is to (1) deter and detect illegal dumping around homeless encampments, (2) to identify unpermitted feeders in accordance with Large Group Feeding Ordinance, and (3) to detect drug use and drug sales in and around encampments. The cost involved with this setup includes installation and monitoring service. This cost is included in the overall clean-up budget. Locations include (please see Appendix B):

#### **DOWNTOWN**

- SW 2nd Street from the Warf to North Miami Avenue
- Parking lot on Miami River Drive near MRC and around FPL building
- SW 1 Street Parking lot West of Macy's
- Flagler Street and NW 1 Street West Bound

#### **OVERTOWN**

- NW 10/11 Streets between 4 and 6 Avenue
- NW12 Street between 1 Avenue and 2 Avenue
- NW 17 Street between NW 4 and 6 Avenue
- NW 13/14 Streets between 1 and 2 Avenue.

#### **LITTLE HAVANA**

- SW 5<sup>th</sup> and SW 6<sup>th</sup> Street (Jose Marti Park area)
- Location TBD

Placements: Homeless Outreach "Green Shirts" will continue offering shelter and resources to homeless individuals and families. If clients refuse, they are required to move from the clean-up location.

Partner Engagement: Continue to further engage FDOT and Miami Dade County regarding all appropriately properties in the City of Miami regarding homeless individuals and encampments around clean ups. Engage City of Miami Department of Public Works and Resilience to identify locations where foliage, trees, art, and more may be added to improve the areas.

Property: As per Executive Order, we will follow City Manager's APM regarding personal property.

Shopping Carts: Police will enforce Florida State Statute 506.509 , which states that "Any person who is in possession of a shopping cart... with a registered name or mark shall be presumed to be in possession of stolen property and is guilty of a misdemeanor of the first degree."

Signage: Signs will be posted throughout the City that provide notice of the Large Group Feeding Ordinance, as well as signs that relate to ADA compliance and the blocking of sidewalks within the City of Miami. The Large Group Feeding permit allows the City to manage large group feedings in our public spaces with advance notice through printed signage (installed by Public Works), ensuring a safe and sanitary environment for our citizens. Signage is in accordance with City Code 54.9 and Miami21 10.1.3 SIGNS EXEMPTED FROM PERMIT REQUIREMENTS. Police and Code will be deployed together to the following areas where group feedings are common to conduct enforcement:

#### **DOWNTOWN**

- SW 2<sup>nd</sup> St between second Ave and North River Drive
- SW 2<sup>nd</sup> Street and 3<sup>rd</sup> Ave
- SW 1<sup>st</sup> Street along 1<sup>st</sup> Ave to Miami Ave

- S Miami Ave and 2<sup>nd</sup> Street, next to FedEx
- Bayfront Park
- North Miami Ave and 5<sup>th</sup> Street
- NE 6<sup>th</sup> Street and Miami Ave, around Christ Fellowship
- Flagler Street under I-95
- South and West of the MDC Government Center

**OVERTOWN:**

- NW 13<sup>th</sup> St and 1 Ct
- NW 14<sup>th</sup> St and 1<sup>st</sup> Ct
- NW 10<sup>th</sup> Ave and 4<sup>th</sup> St
- NW 10<sup>th</sup> Ave and 5<sup>th</sup> St
- NW 17<sup>th</sup> St and east of 7<sup>th</sup> Ave

**ALLAPATTAH**

- NW 17<sup>th</sup> St west of NW 7<sup>th</sup> Ave (Mother Teresa)
- NW 7 Ave under I-395
- Little Havana sites:
- SW 6<sup>th</sup> St and 3<sup>rd</sup> – 4<sup>th</sup> Ave

City of Miami Code Compliance, Miami Police and an accompanying Homeless outreach staff (Green Shirt) will inspect identified areas in residential and commercial downtown and will issue violations to property owners as needed if litter is left on property due to large group feedings.

A violation of the Large Group Feeding Ordinance shall be enforced jointly by Miami Police and Code Compliance against the individual or organization by the issuance of a civil code enforcement fine in the amount of \$250.00 for a first occurrence and a civil fine in the amount of \$500.00 for each subsequent occurrence in accordance with Chapter 2, Article X of the City Code. Repeat violations in anyone (1) calendar year may also subject the repeat violator to being precluded from receiving Large Group Feeding permits for a period of up to twelve (12) months. These procedures are to be determined.

**DUTIES**

**City of Miami - Homeless Outreach**

- The division of Homeless Outreach will post notices in the areas of the cleanup at least seven (7) days in advance and reserve beds to offer homeless individuals who may be impacted.
- Green Shirts will visit the site daily over the course of the seven (7) day posting and provide assistance. Homeless Outreach personnel are dispatched daily, no fewer than 2 green shirts. We would like at least two green shirts deployed to homeless encampment clean-up sites on a permanent basis, split shifts (8am-6pm and 12pm-9pm). Homeless Outreach will invite agencies to participate (drug and alcohol partners, mental health partners).
- Homeless Outreach will provide guidance and instruction to assist with clean-up activities with Solid Waste and Neighborhood Service Centers.
- Homeless Outreach will properly handle, temporary store and/or dispose of property belonging to homeless persons in accordance with Administrative Policy - Treatment of Homeless Property dated 1/14/2019.
- Homeless Outreach's task force around mental health/substance abuse will work with providers. Task force will continue weekly meetings to discuss cases and patrol every morning.



**City of Miami Code Compliance**

- City of Miami Code Compliance will inspect identified areas in residential and commercial properties throughout the City of Miami.
- City of Miami Code Compliance will issue violations to property owners as needed.

**City of Miami – Solid Waste**

- The Solid Waste Department will provide an initial clean up per location using heavy equipment.
- Department of Solid Waste will also pressure wash. The Department will also work at night due to traffic safety concerns.
- The Department will consider additional cleanup events on Saturdays. This is with the goal of monitoring if the area remains clean as needed.
- The goal for the department is to address public health and sanitary concerns including but not limited to fecal matter, issues relating to the homelessness population, and litter.
- City of Miami Sanitation Code Enforcement Inspectors will educate local property owners to use environmentally safe chemicals that can be recommended to property owners for the maintenance of adjoining Public Right of Way (PROW) areas.

**City of Miami – Police Department**

- Police will accompany the clean-up detail.
- Police will patrol areas post clean up. When debris of encampments are beginning to form, Police will contact Homeless Outreach and Clean Up Coordinator to deploy appropriate teams.
- Police will take law enforcement action when appropriate.
- Police will address individuals found in a state of crisis through the Baker Act or Marchman Act when appropriate.

**City of Miami Neighborhood Service Centers**

- Neighborhood Service Centers will work with scheduling clean ups and be present at clean ups.
- All Centers with Pick-up Trucks and Waste Collectors will be deployed during clean-ups all over the City where homeless clean ups are scheduled.

**City of Miami Office of Communications**

- Communications will assist in public relations efforts through a joint Communication Plan.

**City of Miami Department of Innovation and Technology**

- The Department of Innovation and Technology will explore using 311 as a reporting mechanism for residents and business owners to report any concerns.
- The Department will also explore using 311 for homeless individuals who are seeking shelter.
- The Department, with DHS, will explore contractual services for a call center to assist our homeless population.

**PROPOSED BUDGET****Twelve (12) month Budget**

<b>Department</b>	<b>Description</b>	<b>Amount</b>
Homeless Outreach	Two (2) Case Managers Salaries (Licensed Clinical Social Worker)  Assists in providing counseling services to mental health and substance abuse affected parties to decrease undesirable influences and outcomes. Assists in altering attitudes and behaviors of clients and makes recommendations for effective remedies. Works with assessment, placement, and case management staff along with clients and external resources to assist in developing Individual Service Strategies as appropriate.	<b>\$99,800.00</b> (Salaries)
Homeless Outreach & Solid Waste	10 cameras  Installation, Surveillance & Software	<b>\$5,826.00</b> (Surveillance & Software \$4,326.00 Installation \$1,500.00)
Solid Waste	Six (6) Designated Sanitizing Staff and all PPE and equipment  Staff will be equipped with chemical resistant safety suits and equipment to sanitize streets. They will oversee removing of human waste, as well as eliminating odor from the streets and sidewalks through sanitation efforts.	<b>\$211,551.11</b> (Salaries \$206,000.00 PPE & Equipment \$5,551.11)
Solid Waste	Three (3) Equipment Operators Overtime Salaries	<b>\$87,328.80</b>
Solid Waste	Equipment Costs  (Water Truck, Rear Loader, Street Sweeper, Hawk)	<b>\$174,454.80</b>
Solid Waste	Six (6) Waste Collectors  Dedicated to Homeless Encampment Clean-ups and deployed throughout the entire City to only Homeless Encampment Sites	<b>\$206,000.00</b> (Salaries)
Solid Waste	Supervisor  Dedicated to Homeless Encampment Clean-ups	<b>\$48,531.60</b> (Salaries)
		<b>\$833,492.31</b>

**Homeless Clean Up Log**

Location

Initial Cleanup Date

Yes / No

Heavy Equipment/Machinery Needed

Start Time

End Time

**Please check organization and list contact:**

- ☐ City of Miami Homeless Outreach
- ☐ City of Miami Neighborhood Service Centers
- ☐ City of Miami Department of Solid Waste
- ☐ City of Miami Police
- ☐ City of Miami Code Compliance
- ☐ City of Miami Commissioners Offices (District and Contact)
- ☐ Other City of Miami Departments
- ☐ Miami-Dade Homeless Trust
- ☐ Downtown Development Authority
- ☐ Miami-Dade Florida Department of Health
- ☐ Providers (Organization and Contact)

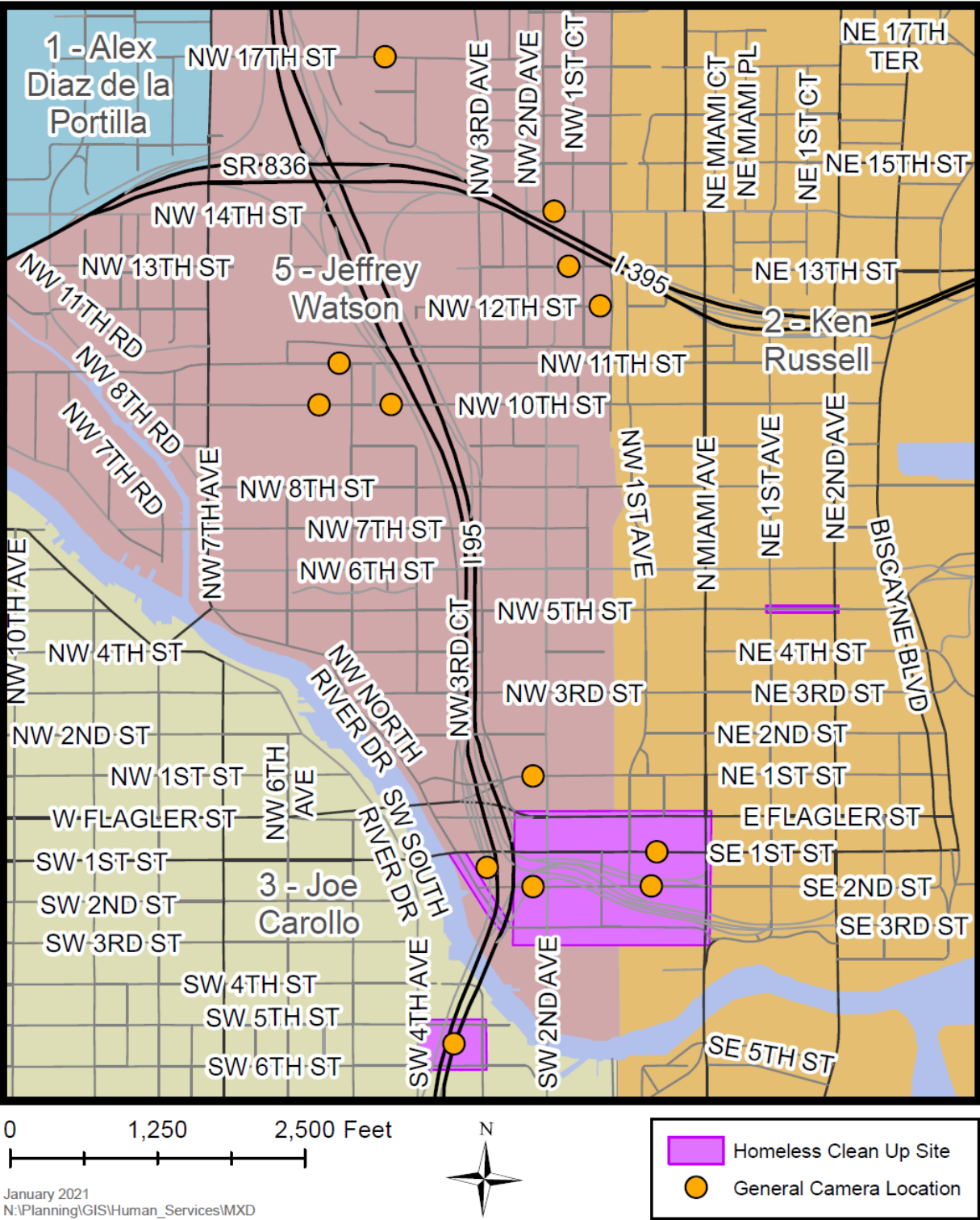
Date of Follow Up Cleanup #1

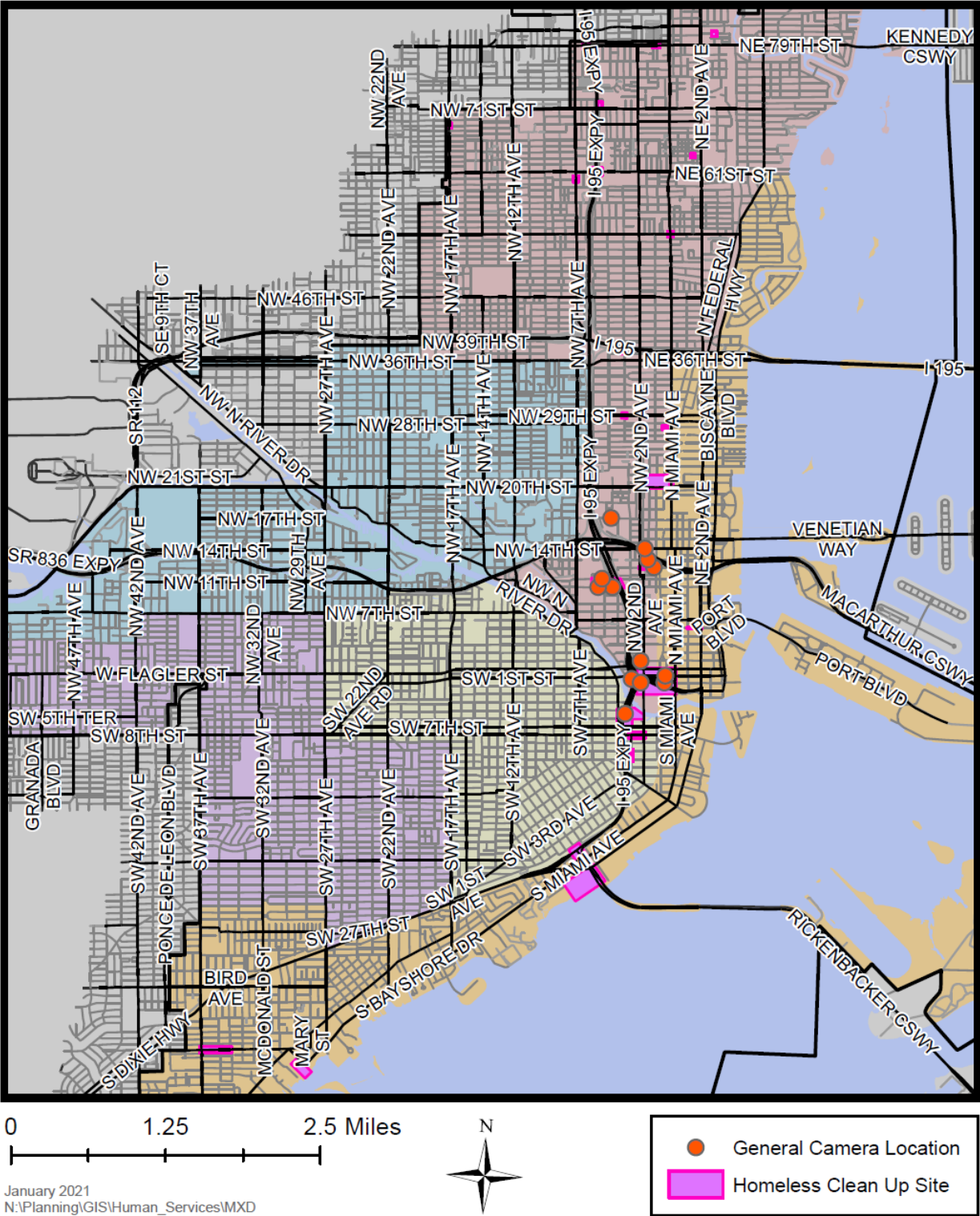
Date of Follow Up Cleanup #2

**APPENDIX A****DHS Neighborhood Service Center Homeless Locations**

<b>OVERTOWN</b>	
N.W. 10-11 <sup>th</sup> Streets between N.W. 4 <sup>th</sup> Avenue-6 <sup>th</sup> Avenue	
N.W. 17 <sup>th</sup> Street starting at N.W. 5 <sup>th</sup> Avenue	
N.W. 13 <sup>th</sup> Street and N.W. 1 <sup>st</sup> Court	
Residential location N.W. 12 <sup>th</sup> Street and along areas between N.W. 1 <sup>st</sup> Court and 2 <sup>nd</sup> Avenue	
N. Miami Avenue between N.W. 20-22 Streets	
<b>LITTLE HAITI</b>	
551 NW 71 <sup>st</sup> (Nu-Way Building)	
80 <sup>th</sup> and NE 3 <sup>rd</sup> Avenue	
79 <sup>th</sup> St and NW 1 <sup>st</sup> Pl (next to the laundromat)	
NE 54 <sup>th</sup> St and N. Miami Avenue/3 NE 54 <sup>th</sup> Street (Rear of Family Dollar)	
7848 NW 1 <sup>st</sup> Avenue (Empty Lot)	
NW 79 <sup>th</sup> St and I95 (Under the overpass)	
180 NE 64 <sup>th</sup> Street (Empty lot)	
<b>WYNWOOD</b>	
300 NW 29 <sup>th</sup> Street	
2010 NW 1 <sup>st</sup> Avenue/2010 NW 1 <sup>st</sup> Ct./2101 NW Miami Ct./2101 NW 1 <sup>st</sup> Avenue/2100 NW Miami Ct.	
2136 NW 1 <sup>st</sup> Avenue	
2145 NW 2 <sup>nd</sup> Avenue	
80 NW 20 <sup>th</sup> Street	
301 NW 37 <sup>th</sup> Street	
51 NW 27 <sup>th</sup> Street	
<b>MODEL CITY</b>	
I-95 NW 62nd Street (Underpass)	
Corner of NW 61 <sup>st</sup> Street and NW 7 <sup>th</sup> Avenue (Carver Theater)	
6820 NW 17 <sup>th</sup> Avenue	
<b>COCONUT GROVE</b>	
Alice Wainwright Park (2845 Brickell Avenue)	
Peacock Park (2820 McFarlane Road)	
Grand Avenue between Hibiscus Street thru Douglas Road (SW 37 Ave)	
<b>DOWNTOWN</b>	
SW 1 <sup>st</sup> Ct and SW 2 <sup>nd</sup> Street	
SW 2 <sup>nd</sup> Avenue and SW 2 <sup>nd</sup> Street	
SW 2 <sup>nd</sup> St and N. River Drive	
North Miami Avenue and SW 1 <sup>st</sup> and 2 <sup>nd</sup> Street	
SW 1 <sup>st</sup> Court and S. Miami Avenue and SW 1 <sup>st</sup> Street	
South Miami Avenue and SW 3 <sup>rd</sup> Street	
<b>BRICKELL</b>	
SW 2 <sup>nd</sup> to 4 <sup>th</sup> Avenue and 6 <sup>th</sup> Street (location goes up to the SW 2 <sup>nd</sup> Avenue bridge) & entrance to SW 7 <sup>th</sup> St.	
SW 3 <sup>rd</sup> to 4 <sup>th</sup> Avenue and 5 <sup>th</sup> St/SW 3 <sup>rd</sup> to 4 <sup>th</sup> Avenue and 7 <sup>th</sup> Street/SW 3 <sup>rd</sup> Avenue and 10 <sup>th</sup> to 11 <sup>th</sup> Street	
SW 2 <sup>nd</sup> to SW 3 <sup>rd</sup> Avenue and SW 8 <sup>th</sup> Street	
SW S. Miami Court and SW 26 <sup>th</sup> Road	

APPENDIX B







**PATROL**

**Departmental Order 11  
Chapter 10**

**HOMELESS**

Section

- 10.1 Policy
- 10.2 Organization
- 10.3 Responsibility
- 10.4 Mission
- 10.5 Definitions
- 10.6 Procedures
- 10.7 Property

**10.1 POLICY:** It is the policy of the City of Miami Police Department to ensure that personnel are sensitive to the needs and rights of our Homeless population, as well as knowledgeable of the department's arrest policies concerning such persons.

**10.2 ORGANIZATION:** The City of Miami has a policy that we shall not arrest visibly homeless persons who live in public for performing acts, criminalized as misdemeanors, such as sleeping, eating, lying down, or sitting in public, when there is no available shelter. It is not a crime to be homeless. This policy should not be construed as protecting persons (whether homeless or not) from arrest for engaging in any other type of criminal activity.

**10.3 RESPONSIBILITY:** It is the responsibility of all City of Miami Police Officers, whether working in an on-duty or off-duty capacity, to abide by this Departmental Order.

**10.4 MISSION STATEMENT:** We must continue to vigorously do our job and enforce the law's which were enacted to ensure a safer community, while extending compassion for homeless persons.

**10.5 DEFINITIONS:**

**10.5.1** A "homeless person". An individual is considered a "homeless person" if he or she " lacks a fixed, regular and adequate night time residence and has a primary night time residency that is: (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations; (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings. The term "homeless person" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a state law". The term "homeless person" does not include any person identified as a registered sex offender under section 775.21 Fla. Stat., as amended, or sexual predator under section 775.215 Fla. Stat., as amended, or sections 21-277 to 21-2185 Miami-Dade County Code. An officer is allowed to make reasonable inquiry to make this determination.

**10.5.1.2** An "available shelter" means a shelter for a period of at least, with a bed, or a mat at least (3) inches thick, at no cost to the homeless person, within the territorial boundaries of the City or within one mile thereof, or if agreed to by the homeless person, within Miami-Dade County, that treats homeless persons with dignity and respect, imposes no religious requirements, and unless agreed to

by the homeless person, does not impose involuntary substance abuse or mental health treatment as a condition for shelter.

**10.5.1.3 "PUBLIC PROPERTY":** "Public Property" includes all property owned by any governmental entity (federal, state or local). "Public Property" shall not include property which has become subject to

**10.5.1.4** A leasehold interest, management agreement or other possessory interest of a nongovernmental lessee, licensee or manager, which is operated as a private business. A public park shall always be public property within the meaning of this definition.

**10.5.1.3.1 "EXEMPT PUBLIC PROPERTY":** The following are "exempt public properties" (1) City of Miami, City Hall, 3500 Pan American Drive; (2) Miami Riverside Center, 444 SW 2<sup>nd</sup> Avenue; (3) City of Miami Fire Stations; (4) City of Miami Police Stations and (5) City of Miami NET (Neighborhood Enhancement Team) Offices. A homeless person's presence in the interior of an "exempt public property" is not a trespass within the meaning of 10.6.2.3.3 (11) where the homeless person's activities are reasonably related to the governmental business activities normally performed within these physical structures.

## **10.6 PROCEDURES:**

**10.6.1** An officer always has the right to approach any individual including a homeless person to allay any suspicions an officer may have about the individual, and ascertain that no criminal activity is occurring.

**10.6.2** At any time, and for any reason a law enforcement officer may approach a homeless person, who has not been observed engaging in any criminal conduct, to advise him or her of shelters, services, or assistance which are currently available. The officer may also call for the assistance of an outreach worker. The homeless person may or may not accept the advice or referral or he/she may even walk away from the area prior to the outreach worker/arriving. The rationale is to pro-actively have an outreach worker address the homeless person with referrals. If such an approach and advice occurs by a law enforcement officer, that officer shall complete a Field Information Card, or its electronic equivalent, with the facts of the incident, the referral and indicate at the top of the card "Homeless". The officer will turn the pink Field Information Card, or its electronic equivalent, in to his supervisor. The supervisor will check the Field Information Card for completeness, sign the top right hand corner with his name and IBM number and deliver to the Records Unit daily. In the case of a homeless person who refuses and who has refused assistance in the past thirty (30) days, a new Field Information Card, or its electronic equivalent, is not required to be completed for each encounter as long as the prior-filed Field Information Card, or its electronic equivalent, is update with the new date of contact with the homeless person. The pink Field Information Card, or its electronic equivalent, shall be filed with the Records Unit within the Miami Police Department.

**10.6.2.1** When a homeless person meets the criteria for involuntary examination under Florida Law (§394.463, Fla. Stat., as amended) "Baker Act" a law enforcement officer may, in his discretion, take the homeless person to the nearest receiving facility for involuntary examination. If the homeless person is taken to such a receiving facility for involuntary examination, a copy of the "Baker Act Forms" shall be filed with the nearest receiving facility. In addition, the officer shall complete an Field Information Card, or its electronic equivalent, The officer will turn the pink Field Information, or its electronic equivalent, card in to his supervisor. The supervisor will check the card for completeness, sign the top right hand corner with his name and IBM number and deliver the Field Information Card to the Records Unit daily.



**10.6.2.2** If a homeless person is observed violating a "Life Sustaining Conduct" misdemeanor, (as listed under 10.6.2.3.3) the law enforcement officer may exercise the following courses of conduct.

**10.6.2.3** If an officer determines that an individual is a homeless person and through his observation determines that a "Life Sustaining Conduct" misdemeanor (as listed under 10.6.2.3.3) is occurring in his presence, he must first check to see if there is an available shelter. The officer will contact the communications unit to ascertain if there is an available shelter. If there is an available shelter, the officer will offer the shelter to the homeless person, if the homeless person chooses shelter rather than arrest. An Outreach Team will respond to transport the homeless person to the shelter. If the Outreach Team (if available) is unavailable the law enforcement officer will transport the homeless person. If the homeless person is transported to a shelter, the officer will complete a Field Information Card, or its electronic equivalent, with the facts of the incident and indicate at the top of the card "Homeless". The officer will turn the pink Field Information Card in to his supervisor. The supervisor will check the card for completeness, sign the top right hand corner with his name and IBM number and deliver the Field Information Card, or its electronic equivalent, to the Records Unit daily.

**10.6.2.3.1** If the officer has probable cause to arrest the homeless person for a "Life Sustaining Conduct Misdemeanor," (as they are listed under 10.6.2.3.3) and there is an "available shelter" and the homeless person refuses the shelter, or if the sole available shelter at the time is a shelter from which the homeless person is barred from because of his own purposeful misconduct, criminal or otherwise, which occurred at that shelter, the officer may arrest the homeless person. The officer must document on the A form, beyond the probable cause for the arrest, the offer of shelter, the refusal by the homeless person to accept the "available shelter," the name of the shelter, and the word "Homeless" should be written at the top of the Arrest Affidavit. A copy of the Arrest Affidavit will be forwarded to the Miami Police Records Unit in conjunction with a pink Field Information Card, or its electronic equivalent.

**10.6.2.3.2** If the officer has probable cause to arrest the homeless person for a "Life Sustaining Conduct Misdemeanor" (as they are listed under 10.6.2.3.3), and there is no "available shelter," the officer shall not make an arrest nor take any other police action (warnings, etc). The officer will complete a Field Information Card, or its electronic equivalent, explaining the circumstances of the initial contact with the homeless person, the fact that there was no "available shelter," the fact that no arrest was made and the word "Homeless" should be written at the top of the card. The officer will turn the pink Field Information Card, or its electronic equivalent, in to his supervisor. The supervisor will check the Field Information Card for completeness, sign the top right hand corner with his name and IBM number and deliver the Field Information Card, or its electronic equivalent, to the Records Unit daily. However, if the homeless person described above is observed committing one of the below listed "life sustaining conduct" misdemeanors, and the life sustaining conduct misdemeanor causes imminent threat of physical injury to the homeless person or other person(s), the law enforcement officer must warn the homeless person to stop and if they refuse to do so, may arrest them regardless of whether there is an available shelter.

**10.6.2.3.3** "Life Sustaining Conduct Misdemeanors" are the following:

1. Being in park after hours. Current Provisions (38-3 1-13, F.S. 162.22)
2. Public nudity where necessary to carry on the daily necessities of life, such as bathing or responding to a call of nature. If the public nudity is done intentionally in plain view of others and the exposure or exhibition of the sexual organs, or nakedness was in a vulgar, indecent, lewd or lascivious manner, the law enforcement officer may arrest the person regardless of whether there is an available shelter. Moreover, in no circumstance shall public nudity be allowed for a call of nature if there

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exists an open public restroom within one-quarter of a mile (1.320 feet) of the homeless person performing a call of nature. Current Provisions (F.S. 800.03, 37-1, 38-62)

3. Reserved
4. Obstructing passage on sidewalks, except that after one warning, no person or persons may lie on the sidewalk in a perpendicular fashion blocking the sidewalk, or may obstruct a sidewalk in such a way as to endanger other persons by requiring them to walk onto a street where but for the obstruction, such persons would otherwise have been able to safely walk on the sidewalk. Obstructing a street, road, or highway shall not be construed to be a "Life Sustaining Conduct Misdemeanor" within the meaning of this departmental order. Current Provisions 54-1 to 54-3, 37-3, FS 316.2045)
5. Vehicles, living or sleeping in. Current Provision (37-4)
6. Loitering in Restrooms. Current Provision (38-68)
7. Littering, except if within 300 feet of a usable trash receptacle, a law enforcement officer must warn the homeless person to stop and if they refuse to do so, may cite them regardless of whether there is an available shelter. Current Provision (FSS 403.314, 22-6, 38-17, 38-63)
8. Camping in parks. Current Provision. (38-71)
9. Use of facilities for other than intended purpose (e.g. sleeping on park bench). Current Provisions (38-54).
10. Reserved
11. Trespass on "public property" other than structure or conveyance. Current Provision. (F.S. 810.09 (1). Trespass on private property or in an "exempt public property" is not a "Life Sustaining Conduct Misdemeanor" within the meaning of this departmental order.

**10.6.2.3.4** Nothing in 10.6.2.3.3 listing the "Life Sustaining Conduct Misdemeanors" shall prevent an immediate arrest under 800.04 FS entitled "Lewd, lascivious, or indecent assault or act upon or in presence of a child" if the officer has probable cause to make such an arrest.

**10.6.2.3.5** Homeless Persons observed violating a misdemeanor, which is not classified above as "Life Sustaining Conduct Misdemeanors". Under this category the existence of an available shelter will not dictate whether an arrest is effected. However, officers can still refer homeless persons to the Outreach Team. A referral to an appropriate shelter rather than an arrest might be a better solution to minor misdemeanor arrests. In lieu of arrest the officer may warn the homeless person to stop the unlawful conduct, and refer the person to a shelter, or if the officer deems it appropriate, the officer may detain or arrest the homeless person. If the homeless person is arrested, the word "Homeless", should be printed on the top of the "A" form. A copy of which shall be filed with the Records Unit within the Miami Police Department. If the officer makes a decision not to make an arrest, and a referral is made, the officer shall complete a Field Information Card, or its electronic equivalent, with the facts of the incident, the referral and indicate at the top, "Homeless". The officer will turn the pink Field Information Card, or its electronic equivalent, in to his supervisor. The supervisor will check the card for completeness, sign the top right hand corner with his name and IBM number and deliver the Field Information Card, or its electronic equivalent, to the Records Unit daily.

## **10.7 PROPERTY:**

**10.7.1** The City shall respect the personal property of all homeless persons. Officers shall follow existing policies for taking custody of personal property. In no event shall any officer destroy any

personal property known to belong to a homeless person, or readily recognizable as property of a homeless person unless it is contaminated or otherwise poses a health hazard to an officer or to members of the public. Officers are not responsible for taking custody of mattresses.

**10.7.2** The disposition of personal property shall never prevent an officer from effectuating an arrest. However, the following safeguards shall be undertaken by the arresting officer to preserve the property of a homeless person, to the extent feasible:

**10.7.2.1** The arresting officer shall always attempt to secure personal items such as identification, medicines and eyeglasses and other small items of importance identified by the arrestee, which are not large or bulky, in accordance with the police department's existing procedures;

**10.7.2.2** The arresting officer shall ensure that large or bulky items (which are not contaminated or otherwise pose a health hazard to the officers or to members of the public) are not abandoned at the point of arrest, but rather secured by an outreach worker and maintained by existing outreach procedures. If an outreach worker is unavailable, then it must be secured by the arresting officer until an outreach worker becomes available to assume its maintenance in accordance with existing outreach procedures;

**10.7.3** In no event shall any law enforcement officer destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e. clothing and other belongings organized or packaged together in a way indicating it has been abandoned) except as permissible by law (in accordance with the department's operating procedures), or if the property is contaminated or otherwise poses a health hazard to officers or to members of the public.

**10.7.4** When a homeless person is placed in a shelter, large and bulky items, which are not contaminated or otherwise pose a health hazard or obvious safety issue, and that are not abandoned, shall be secured by an outreach worker and maintained in accordance with existing outreach procedures.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-cv-21939-BLOOM/Otazo-Reyes

LATOYLA YASHEEN COOPER-LEVY,  
*et al.*,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

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**ORDER SETTING TRIAL AND PRE-TRIAL SCHEDULE, REQUIRING  
MEDIATION, AND REFERRING CERTAIN MATTERS TO MAGISTRATE JUDGE**

**THIS CAUSE** is set for trial during the Court's two-week trial calendar beginning on **July 3, 2023, at 9:00 a.m.** Calendar call will be held at **1:45 p.m. on Tuesday, June 27, 2023.** No pre-trial conference will be held unless a party requests one at a later date and the Court determines that one is necessary. Unless instructed otherwise by subsequent order, the trial and all other proceedings in this case shall be conducted in **Courtroom 10-2 at the Wilkie D. Ferguson, Jr. United States Courthouse, 400 North Miami Avenue, Miami, FL 33128.** The parties shall adhere to the following schedule:

**August 30, 2022** Parties exchange initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1). The parties are reminded that pursuant to S.D. Fla. L.R. 26.1(b), initial disclosures shall not be filed with the Court unless an exception noted in the Local Rules applies.

**September 6, 2022** The parties shall select a mediator pursuant to Local Rule 16.2, shall **schedule a time, date, and place for mediation**, and shall jointly **file a notice, and proposed order scheduling mediation** via CM/ECF in the form specified on the Court's website, <http://www.flsd.uscourts.gov>. If the parties cannot agree on a mediator, they shall notify the Clerk in writing as soon as possible, and the Clerk shall designate a certified mediator on a blind rotation basis. Counsel for all parties shall familiarize themselves with and adhere to all provisions of Local Rule 16.2. Within

**three (3) days** of mediation, the parties are required to file a mediation report with the Court. Pursuant to the procedures outlined in the CM/ECF Administrative Procedures, **the proposed order is also to be emailed to bloom@flsd.uscourts.gov in Word format.**

<b>October 17, 2022</b>	All motions to amend pleadings or join parties are filed.
<b>February 7, 2023</b>	Parties disclose experts and exchange expert witness summaries or reports.
<b>February 21, 2023</b>	Parties exchange rebuttal expert witness summaries or reports.
<b>March 7, 2023</b>	All discovery, including expert discovery, is completed.
<b>March 21, 2023</b>	Parties must have completed mediation and filed a mediation report.
<b>March 29, 2023</b>	All pre-trial motions, motions <i>in limine</i> , and <i>Daubert</i> motions (which include motions to strike experts) are filed. <b>This deadline includes all <u>dispositive motions</u>.</b>
<b>June 19, 2023</b>	Parties submit joint pre-trial stipulation in accordance with Local Rule 16.1(e), proposed jury instructions and verdict form, or proposed findings of fact and conclusions of law, as applicable.

**Motions in limine.** Each party is limited to filing one motion *in limine*. If all evidentiary issues cannot be addressed in a 20-page memorandum, leave to exceed the page limit will be granted. **The parties are reminded that motions *in limine* must contain the Local Rule 7.1(a)(3) certification.**

**Daubert Motions.** Each party is limited to filing one *Daubert* motion. If all evidentiary issues cannot be addressed in a 20-page memorandum, leave to exceed the page limit will be granted. **The parties are reminded that *Daubert* motions must contain the Local Rule 7.1(a)(3) certification.**

**Summary Judgment Motions.** The parties are reminded that strict compliance with Local Rule 56.1 is mandated. Pursuant to Local Rule 56.1(b), a statement of material facts must be supported by *specific* references to pleadings, depositions, answers to interrogatories, admissions, and affidavits on file with the Court. In the event a responding party fails to controvert a movant's

supported material facts in an opposing statement of material facts, the movant's material facts will be deemed admitted. Local Rule 56.1(c). In the interest of judicial economy, in the interest of proper and careful consideration of each party's statement of material facts, and in the interest of determining matters on summary judgment on the merits, the Court orders as follows:

1. Each exhibit referenced in the motion for summary judgment and/or in the statement of material facts must be filed on the docket. Exhibits which have already been filed on the docket *need not be refiled*. If a deposition transcript is referenced, a complete copy must be filed **which includes all exhibits**. Within twenty-four (24) hours of filing a motion for summary judgment, the movant shall separately file an index of the cited exhibits which names each exhibit and references the docket entry at which that exhibit may be found.
2. Each exhibit referenced in the response to the motion for summary judgment and/or in the opposing statement of material facts must be filed on the docket. Exhibits which have already been filed on the docket *need not be refiled*. If a deposition transcript is relied upon, a complete copy must be filed **which includes all exhibits**. Within twenty-four (24) hours of filing a response to the motion for summary judgment, the responding party shall separately file an index of the cited exhibits which names each exhibit and references the docket entry at which that exhibit may be found.
3. In the event that cross motions for summary judgment are filed, the Court may order the parties to submit a consolidated statement of material facts and responses as appropriate. If cross motions are anticipated, the parties may jointly move for an

order to file consolidated statements prior to filing the motions for summary judgment.

**Jury Instructions and Verdict Form** (if applicable). The parties shall submit their proposed jury instructions and verdict form jointly, although they need not agree on each proposed instruction. Where the parties do not agree on a proposed instruction, that instruction shall be set forth in bold type. Instructions proposed only by a plaintiff shall be underlined. Instructions proposed only by a defendant shall be italicized. Every instruction must be supported by citation to authority. The parties shall use as a guide the Eleventh Circuit Pattern Jury Instructions for Civil Cases, including the directions to counsel contained therein. Proposed jury instructions and verdict form, in typed form, including substantive charges and defenses, shall be submitted to the Court prior to calendar call, in Word format, via e-mail to [bloom@flsd.uscourts.gov](mailto:bloom@flsd.uscourts.gov). Instructions for filing proposed documents may be viewed at <http://www.flsd.uscourts.gov>.

**Referral to Magistrate Judge.** Pursuant to 28 U.S.C. § 636 and this District's Magistrate Judge Rules, all discovery matters are referred to **Judge Alicia M. Otazo-Reyes**. Furthermore, pursuant to 28 U.S.C. § 636(c)(1), the parties may consent to trial and final disposition by Judge Otazo-Reyes. **The deadline for submitting consent is March 29, 2023.**

**Discovery.** The parties may stipulate to extend the time to answer interrogatories, produce documents, and answer requests for admissions. The parties shall not file with the Court notices or motions memorializing any such stipulation unless the stipulation interferes with the deadlines set forth above. Stipulations that would so interfere may be made only with the Court's approval. *See* Fed. R. Civ. P. 29. To the extent not abrogated or contradicted by this Order, all agreements and stipulations entered into between the parties prior to this Order continue to bind the parties. The Court reminds the parties that under the Local Rules, initial and expert disclosures; deposition

transcripts; interrogatories; requests for documents, electronically stored information or things, or to permit entry upon land; requests for admission; notices of taking depositions or notices of serving subpoenas; and associated responses, objections, notices or any associated proof of service, **shall not be filed until they are used in the proceeding or the court orders their filing.** S.D. Fla. L.R. 26.1(b). Improper filings will be stricken from the record. In addition to the documents enumerated in Local Rule 26.1(b), the parties shall not file notices of deposition with the Court. The parties must make every effort to resolve discovery disputes without requiring Court intervention. Strict compliance with the Local Rules is expected.

**Discovery Disputes.** If parties are unable to resolve their discovery disputes without Court intervention, Magistrate Judge Otazo-Reyes will set the matter for hearing without the need for filing a motion. The moving party must seek relief within fifteen (15) days after the occurrence of the grounds for relief by contacting Judge Otazo-Reyes' Chambers and requesting a hearing. Magistrate Judge Otazo-Reyes' telephone number is (305) 523-5740 and her Chambers are located at 301 N. Miami Avenue, 10th Floor, Miami, Florida. Once a hearing date is obtained, the movant shall provide notice to all relevant parties by filing a Notice of Hearing. The Notice of Hearing shall briefly specify the substance of the discovery matter to be heard and include a certification that the parties have complied with the pre-filing conference required by Southern District of Florida Local Rule 7.1(a)(3). No written discovery motions, including motions to compel and motions for protective order, shall be filed unless requested by Magistrate Judge Otazo-Reyes. It is the intent of this procedure to minimize the necessity of motions.

The Court expects all parties to act courteously and professionally in the resolution of their discovery disputes and to confer in an attempt to resolve the discovery issue prior to requesting



the hearing. The Court may impose sanctions, monetary or otherwise, if the Court determines discovery is being improperly sought or is not being provided in good faith.

**Civility and Professionalism.** Members of the bar and the Court are proud of the long tradition of courteous practice in the Southern District of Florida. Indeed, it is a fundamental tenet of this Court that attorneys in this District be governed at all times by a spirit of cooperation, professionalism, and civility. For example, and without limiting the foregoing, it remains the Court's expectation that counsel will seek to accommodate their fellow practitioners, including in matters of scheduling, whenever reasonably possible and that counsel will work to eliminate disputes by reasonable agreement to the fullest extent permitted by the bounds of zealous representation and ethical practice.

To that end, the Court advises the parties that strict compliance with the requirements of Local Rule 7.1(a)(3) is expected. In addition, if a motion for extension of time is opposed, this Court requires that the certificate of conferral state briefly the reason(s) for opposing counsel's objection to the requested extension.

The parties are further advised that the failure to comply with any of the procedures contained in this Order or the Local Rules may result in the imposition of appropriate sanctions, including, but not limited to, the dismissal of this action or entry of default.

**DONE AND ORDERED** in Chambers at Miami, Florida, on August 16, 2022.

A handwritten signature in black ink, appearing to be 'JB' with a long horizontal stroke extending to the right.

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**BETH BLOOM**  
**UNITED STATES DISTRICT JUDGE**

Copies to:

Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-cv-21939-BLOOM/Otazo-Reyes

LATOYLA YASHEEN COOPER-LEVY.,  
*et al.*,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

\_\_\_\_\_ /

**ORDER ON MOTION TO DISMISS**

**THIS CAUSE** is before the Court upon Defendant City of Miami’s (“City”) Motion to Dismiss, ECF No. [16] (the “Motion”). Plaintiffs Latoyla Cooper-Levy (“Cooper-Levy”), Phillip Sylverin (“Sylverin”), Sherman Rivers (“Rivers”), and Joseph Simmons (“Simmons”), filed a Response, ECF No. [17], to which the City filed a Reply, ECF No. [22]. The Court has carefully reviewed the Motion, all supporting and opposing filings, the record in this case, the applicable law, and is otherwise fully advised. For the reasons set forth below, the Motion is denied.

**I. BACKGROUND**

This case arises as a result of the City’s alleged violations of certain individuals’ constitutional rights. Plaintiffs, all of whom are homeless individuals, filed their Complaint asserting two claims, pursuant to 42 U.S.C. § 1983, for violating their Fourth and Fourteenth Amendment rights. *See generally* ECF No. [1]. Plaintiffs allege that the City engages in a practice and custom of unlawfully seizing and destroying personal property belonging to homeless individuals like Plaintiffs by conducting sweeps of homeless encampments with insufficient notice. *Id.*

This is not the first time the City of Miami has been sued for allegedly violating the Fourth Amendment rights of homeless individuals. In 1992, Michael A. Pottinger, as representative of a class of homeless persons, filed a lawsuit against the City of Miami under 42 U.S.C. § 1983, alleging that the City’s police department had “a custom, practice and policy of arresting, harassing and otherwise interfering with homeless people for engaging in basic activities of daily life . . . in the public places where they are forced to live.” *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1554 (S.D. Fla. 1992) (“*Pottinger I*”). The plaintiff in *Pottinger* sought to enjoin the City from arresting homeless individuals engaging in “life-sustaining conduct” in public spaces and from seizing or destroying their property in violation of the Fourth Amendment. *See id.* After the City and police were found to have violated the rights of homeless individuals, the parties ultimately reached a settlement and entered into a consent decree, which remained in effect from 1998 to 2019, and prohibited “the arrest of the homeless for being homeless and the seizure of their property.” *Pottinger v. City of Miami*, 359 F. Supp. 3d 1177, 1179 (S.D. Fla. 2019) (“*Pottinger II*”). Three years ago, in *Pottinger II*, the district court granted the City’s motion to terminate the consent decree, and the decision was affirmed by the Eleventh Circuit. *See id.*, *aff’d sub nom. Peery v. City of Miami*, 977 F.3d 1061 (11th Cir. 2020).

Against this backdrop, the Complaint alleges that in 2019, the City adopted Administrative Policy regarding the Treatment of Homeless Persons’ Property (APM-1-19), which “establish[ed] a standard practice for the handling, temporary storage, and disposition of property belonging to homeless persons.” ECF No. [1] at 17-21 (“Policy”). The Policy also requires City personnel to “attempt to secure personal items such as identification, medicines, and eyeglasses and other small items of importance . . . readily identifiable as intimate personal property.” *Id.* at 18, section I.1. Even so, the Policy provides that homeless individuals’ property may be disposed of by the City

if the property is determined to be “contaminated” or otherwise poses a health or safety concern to City personnel or members of the public. *Id.*, section I.2.a.

According to the Complaint, in 2021, as a part of a continued effort to address homelessness in Miami, the City drafted a “Street Clean up and Encampment Resource Plan” in an attempt to facilitate the cleaning of homeless encampments by conducting ongoing “sweeps.” ECF No. [1] ¶ 23. As Plaintiffs allege, City staff during these sweeps arrive at homeless encampments with dump trucks and instruct homeless individuals to move their belongings before the City removes and disposes of all remaining personal property at the encampment. *Id.* ¶ 31. Plaintiffs further allege that the City does not sort the personal property or attempt to secure important personal items before disposal. *Id.* ¶ 36.

According to the Complaint, the City conducted two such sweeps affecting Plaintiffs: the first occurring in May, 2021 at NW 17th Street and 7th Avenue; and the second in August, 2021 under the bridge on NW 11th Street between NW 5th Avenue and NW 3rd Avenue. *Id.* ¶¶ 45-46, 59, 61, 70, 82. Each of the four Plaintiffs alleges that during these incidents, the City disposed of personal property that was not abandoned or contaminated and failed to provide adequate notice of when and where the City’s sweeps would occur. *Id.* ¶¶ 51, 66, 77, 87.

The incident in May, 2021 involved Cooper-Levy. The Complaint alleges that while away from the encampment attending a job orientation, the City removed and disposed of her “U.S. passport, birth certificate, Social Security card, identification, telephone, clothing, work uniform, shoes, sleeping tent, and an urn containing her mother’s ashes.” *Id.* ¶ 52. Cooper-Levy alleges that her personal property, was not abandoned, contaminated, and did not pose a health hazard or safety issue. *Id.* ¶ 51. According to the Complaint, upon her return to the encampment, Cooper-Levy discovered a notice left by the City under a brick which contained information about how to

retrieve stored property. *Id.* ¶ 54. However, upon following the instructions on the notice, City staff told Cooper-Levy that they did not have any of her belongings. *Id.* ¶ 55. The City made no attempt to save items that belonged to her, made no attempt to determine if her property was contaminated or contained dangerous items, and made no offer to store her property. Instead, the City irrevocably seized and destroyed her property. *Id.* ¶ 56.

The second incident alleged involves Simmons, Sylverin, and Rivers. Plaintiffs allege that the City arrived to conduct a sweep on or about the morning of August 2. *Id.* ¶ 61. According to the Complaint, City personnel arrived at the encampment around 9:00 a.m. with a crane and dump truck, giving those present a few minutes to move their property before disposal. *Id.* ¶ 62. Sylverin alleges that the City disposed of his property that was not abandoned or contaminated, including his tent,<sup>1</sup> identification, furniture, and family photos. *Id.* ¶ 64. Rivers and Simmons similarly allege that the City disposed of their personal property that was not abandoned or contaminated, including tents, identification documents, prescription medication, new clothing, a bike, toiletries, and sixty dollars in change. *Id.* ¶ 76.

As a result, Plaintiffs seek damages, injunctive, and declaratory relief. In the Motion, the City requests dismissal of the Complaint for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

## II. LEGAL STANDARD

A pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While a complaint “does not need detailed factual allegations,” it must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007);

<sup>1</sup> Sylverin further alleges that his pet cat was inside the tent when a crane was used to load it into the dump truck, presumably killing it. ECF No. [1] ¶ 64.

see *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that Rule 8(a)(2)’s pleading standard “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation”). Nor can a complaint rest on “‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557 (alteration in original)).

When reviewing a motion under Rule 12(b)(6), a court, as a general rule, must accept the plaintiff’s allegations as true and evaluate all possible inferences derived from those facts in favor of the plaintiff. See *Miccosukee Tribe of Indians of Fla. v. S. Everglades Restoration All.*, 304 F.3d 1076, 1084 (11th Cir. 2002); *AXA Equitable Life Ins. Co. v. Infinity Fin. Grp., LLC*, 608 F. Supp. 2d 1349, 1353 (S.D. Fla. 2009). However, this tenet does not apply to legal conclusions, and courts “are not bound to accept as true a legal conclusion couched as a factual allegation.” *Twombly*, 550 U.S. at 555; see *Iqbal*, 556 U.S. at 678; *Thaeter v. Palm Beach Cnty. Sheriff’s Office*, 449 F.3d 1342, 1352 (11th Cir. 2006).

### **III. DISCUSSION**

In the Motion, the City urges the Court to take judicial notice of the procedure and relevant facts in the *Pottinger* litigation. The City argues that the allegations in the Complaint are insufficient to state a claim for municipal liability, that Plaintiffs lack standing for declaratory and injunctive relief, and that declaratory and injunctive relief is improper. The Court considers each argument in turn.

#### **A. Relevance of *Pottinger* Litigation**

As a preliminary matter, the Court considers the significance of *Pottinger* since the parties devote a significant amount of the briefing to it. The City argues that the Court should take judicial notice of facts arising out of the *Pottinger* litigation. Plaintiffs respond that *Pottinger* was factually

different from the allegations contained in Plaintiffs' Complaint, and therefore *Pottinger* is not relevant other than to provide context. The Court agrees.

Significantly, both parties agree that, irrespective of *Pottinger*, homeless individuals remain entitled to "seek relief in an individual action" under § 1983 to vindicate violations of their constitutional rights. *Peery*, 977 F.3d at 1072. In addition, neither party is claiming that *Pottinger* is controlling; rather the City argues that the Court should take judicial notice of facts noted by the *Pottinger* court that it deems to be relevant. However, as Plaintiffs correctly point out, the Complaint is premised upon conduct occurring after the termination of the *Pottinger* consent decree and its attendant litigation. Even if the Court were to grant the City's request and take judicial notice of the *Pottinger* facts, *Pottinger* is not binding or particularly helpful in resolving the issues raised in the Motion. Accordingly, the Court turns to the merits of the Motion.

#### **B. Municipal Liability Under Section 1983**

In order to state a claim under 42 U.S.C. § 1983, a plaintiff must plead that he was (1) deprived of a right; (2) secured by the Constitution or laws of the United States; and (3) that the alleged deprivation was committed under color of state law. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999); *Rayburn v. Hogue*, 241 F.3d 1341, 1348 (11th Cir. 2001). In addition, a plaintiff that seeks to establish liability against a municipality must show that the deprivation of his federal right was attributable to the enforcement of a municipal custom or policy. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978); *Buckner v. Toro*, 116 F.3d 450, 452 (11th Cir. 1997).

Importantly, a municipality is not liable under § 1983 on the basis of *respondeat superior*. *See Monell*, 436 U.S. at 691; *Bd. of Cnty. Comm'rs of Bryan Cnty., Okla. v. Brown*, 520 U.S. 397, 403 (1997) ("a municipality may not be held liable under § 1983 solely because it employs a

tortfeasor.”). Instead, as explained by the Supreme Court, a municipality is only liable under § 1983 “when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.” *Monell*, 436 U.S. at 694. This requires that “a plaintiff seeking to impose liability on a municipality under § 1983 . . . identify a municipal ‘policy’ or ‘custom’ that caused the plaintiff’s injury.” *Bd. of Cnty. Comm’rs of Bryan Cnty., Okla.*, 520 U.S. at 403.

Indeed, “the requirement of a municipal policy or custom constitutes an essential element of a § 1983 claim that a plaintiff must prove in order to establish municipal liability.” *Buckner*, 116 F.3d at 453; *see Flowers v. Patrick*, 869 F. Supp. 2d 1331, 1334-35 (M.D. Ala. 2012) (“a plaintiff’s complaint against a municipality [must] ‘contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.’” (quoting *Randall v. Scott*, 610 F.3d 701, 707 n.2 (11th Cir. 2010))). A policy or custom “can be either a written custom or policy, such as an ordinance, or an unwritten practice that is so widespread and ‘so permanent and well settled as to constitute a custom or use with the force of law.’” *Flowers*, 869 F. Supp. 2d at 1334-35 (quoting *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988)).

#### **i. Plaintiff’s Custom or Practice Claim**

The City argues that Plaintiffs fail to plead sufficient facts of a widespread custom or practice necessary to establish municipal liability. Specifically, the City contends that the incidents alleged involving Cooper-Levy’s property in May, 2021 and the property owned by Simmons, Rivers, and Sylverin in August, 2021 are insufficient to constitute a custom or practice. The City argues that four instances, three of which happened at the same clean-up location and date, are



insufficient to be characterized as “widespread” or “persistent” in order to plausibly plead municipal liability. Plaintiffs respond that the incidents alleged are sufficient. The Court agrees with Plaintiffs.

Plaintiffs rely on *Hoefling v. City of Miami*, 811 F.3d 1271 (11th Cir. 2016) in support of their argument. In *Hoefling*, the plaintiff asserted claims for violations of his Fourth and Fourteenth Amendment rights against the City after City’s marine patrol officers seized his sailboat, on which he lived, and destroyed it. In determining that his claims were adequately pleaded, the Eleventh Circuit noted that

[i]n addition to what he pled concerning the seizure and destruction of his own sailboat, Mr. Hoefling also alleged the following. First, on August 20, 2010, while out of town, Mr. Hoefling received a call from a friend “notifying him that the police were taking boats.” And, in fact, on his return, he discovered that his own sailboat had been “unlawfully seized.” Second, Mr. Hoefling alleged that “local mariners” told him, and that he was “independently aware, that others have fallen victim to similar conduct as a result of the City[’s] and [the marine patrol officers’] failure to adhere to law and appropriate procedures regarding the investigation and destruction of potentially derelict vessels.” Third, Mr. Hoefling alleged that the City refers to this “systematic roundup and destruction of ugly boats in its waters” as a “cleanup” program. Based on these allegations, Mr. Hoefling alleged that the City had a “policy, custom, and/or practice” of “failing to abide by” the state laws, regulations, and procedures governing the “investigation and . . . removal of derelict vessels located in state waters.” Furthermore, he alleged that the defendants did “not follow established law and procedures intended to safeguard against the unlawful destruction of private property[,] . . . instead choosing to remove and destroy [his] property without due process. In sum, the City and its marine patrol officers, “as a matter of policy, custom, and/or practice, ignored [his] fundamental rights, as well as the fundamental rights of other vessel owners.”

811 F.3d at 1280. The Eleventh Circuit determined that these allegations were not the sort of “naked allegations” which are insufficient to state a plausible claim for relief because the facts alleged permitted “the reasonable inference that [the City] is liable for the misconduct alleged.” *Id.* at 1281. The City does not acknowledge or address *Hoefling* in either its Motion or Reply. Moreover, upon review, the cases the City relies upon to support its argument for dismissal are

procedurally distinguishable and not helpful to the Court's analysis at this juncture. *See Brown v. Crawford*, 906 F.2d 667, 671 (11th Cir. 1990) (affirming summary judgment finding facts insufficient to establish widespread abuse on the part of county jail); *Denno v. Sch. Bd. of Volusia Cnty., Fla.*, 218 F.3d 1267, 1277-78 (11th Cir. 2000) (affirming entry of summary judgment in favor of school board because evidence was insufficient to create a genuine issue of fact as to "a pervasive and well-settled custom"); *Gold v. City of Miami*, 151 F.3d 1346, 1350-51 (11th Cir. 1998) (setting aside judgment following jury verdict because plaintiff presented no evidence to establish municipal policy or custom); *Adams v. Custer*, No. 14-CV-80403-CIV-HURLEY, 2016 WL 155081, at \*19 (S.D. Fla. Jan. 12, 2016) (finding upon summary judgment that evidence presented was insufficient to sustain a custom or practice claim); *Mercado v. City of Orlando*, 407 F.3d 1152, 1162 (11th Cir. 2005) (affirming summary judgment in favor of City of Orlando based upon the plaintiff's inability to show that previous incidents were substantially similar factually to his case); *Brooks v. Sheib*, 813 F.2d 1191, 1193-94 (11th Cir. 1987) (finding on appeal following jury verdict that evidence was insufficient to establish that deficient procedures were sufficient to establish municipal liability); *McDowell v. Brown*, 392 F.3d 1283, 1290-91 (11th Cir. 2004) (affirming determination upon summary judgment that evidence was insufficient to establish custom or policy).

The only case at the dismissal stage relied upon by the City, *Lordeus v. Miami-Dade County*, 263 F. Supp. 3d 1307 (S.D. Fla. 2017), is also distinguishable. In *Lordeus*, the plaintiff alleged that police officers kicked him and yelled expletives at him during an arrest while he was handcuffed, and as a result, claimed § 1983 violations for excessive force against the county and the officers. 263 F. Supp. 3d at 1309. In concluding that his excessive force claim was insufficiently pleaded, the court noted that the plaintiff alleged in conclusory fashion only that the

county “had a policy, custom or practice of allowing its police officers to use excessive force and was on notice of the propensity for excessive force and failed to properly investigate complaints.” *Id.* at 1311. In contrast, Plaintiffs here allege four instances on two separate occasions during which the City seized and destroyed their personal property without providing adequate notice or an opportunity for the owners to recovery their property.<sup>2</sup> Although the City seeks to narrow the Complaint’s allegations in arguing that they are insufficient to meet the requirement that a custom or practice be persistent and widespread, the Court finds the allegations to be sufficient. The specific sweeps alleged are separated in time by several months and they occurred at different geographical locations.

In addition, the Complaint alleges the City’s practice and explains how that practice differs from the City’s Policy. The Complaint describes how the City fails to sort or secure specific items and makes no attempt to determine whether unattended property belongs to a homeless individual. ECF No. [1] ¶¶ 36-37). The City’s Policy, which is attached to the Complaint, requires City staff to complete a form and attempt to notify the owner when it stores property belonging to the homeless individual. *Id.* at 18, section I.1. Plaintiffs allege that between January 1, 2021 and April 2022, City staff completed only two inventory invoices and made just one attempt to notify someone that the City was holding their property while cleanup operations were taking place two or three times per week, giving rise to the reasonable inference that homeless individuals’ due process rights to notice are not being observed. *Id.* ¶ 41. Plaintiffs allege further context to support

<sup>2</sup> Rivers and Simmons also allege that the City improperly seized and destroyed their property on other additional occasions. *Id.* ¶¶ 79, 89. The City contends that these allegations are conclusory because the Complaint does not provide dates, locations, or other details about what was destroyed, or how Plaintiffs know the City was ultimately responsible. However, it is well-settled that there is no heightened pleading standard in § 1983 case. *See Hoefling*, 811 F.3d at 1276 (acknowledging that the Eleventh Circuit has “got[ten] rid of heightened pleading altogether in § 1983 cases.”).

the inference that there is a persistent and widespread practice that differs from the City's Policy by describing the City's plan to clear homeless encampments through sweeps. *Id.* ¶¶ 22-23.

The Complaint also sufficiently alleges that the City fails to provide adequate notice of sweeps, the City fails to sort or secure specific items, and fails to determine whether unattended property belongs to a particular homeless individual. *Id.* ¶ 33; ¶¶ 36-37. Each of the Plaintiffs allege he received no notice of an impending sweep occurring at the locations detailed in the Complaint. Plaintiffs also allege that they each had a clearly established possessory interest in his personal property, and that property was contained in their tents at the time of disposal. The City, as Plaintiffs allege, makes no effort to sort through the property (even if it is not abandoned or contaminated) and secure items such as identification, medicines, or other items identified by the homeless person or readily identifiable as vital or significant personal property. Plaintiffs allege that vital documents, including birth certificates, social security cards, public benefits cards, medication, and an urn containing Cooper-Levy's mother's ashes, were all destroyed with no attempt by City officials to adhere to the Policy. *See id.* ¶¶ 52, 64, 76, 84. Plaintiffs further allege that their property was not abandoned or contaminated. *Id.* ¶¶ 51, 66, 77, 87. And although the City argues that these allegations are merely conclusory, the Court disagrees. At the pleading stage, the Court accepts the allegations that Plaintiffs' property was not abandoned or contaminated. Moreover, whether or not the property was in fact abandoned or contaminated is an issue of fact, and is not appropriately resolved at the dismissal stage.

### **C. Claims for Injunctive and Declaratory Relief**

Defendant argues next that Plaintiffs lack standing to seek claims for injunctive and declaratory relief because Plaintiffs have not sufficiently alleged a substantial likelihood of future

injury, and declaratory and injunctive relief are inappropriate for past conduct. Plaintiffs respond that the Complaint sufficiently alleges an entitlement to injunctive and declaratory relief.

### **i. Standing**

The City argues that Plaintiffs have not alleged more than a speculative threat of future injury, noting that they have not identified any violation since August, 2021 or harms of a continuing nature. However, to accept the City's contention, the Court would have to read the Complaint too narrowly and impose a heightened pleading standard that, as the Court previously notes, simply does not apply in this case. *See supra* at 10 n.2.

Because injunctions regulate future conduct, a party has standing to seek injunctive relief only if the party alleges, and ultimately proves, a real and immediate—as opposed to a merely conjectural or hypothetical—threat of future injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983). Similarly, injuries sustained from “past conduct” will not support a claim for declaratory relief absent a showing “that such conduct has continued or will be repeated in the future.” *Emory v. Peeler*, 756 F.2d 1547, 1552 (11th Cir. 1985); *see also Regency of Palm Beach, Inc. QBE Ins. Corp.*, No. 08-81442-CIV, 2009 WL 2729954, at \*4 (S.D. Fla. 2009); *Am. Ins. Co. v. Evercare Co.*, 699 F. Supp. 2d 1355, 1359 (N.D. Ga. 2010) (“The Declaratory Judgment Act is inappropriate to adjudicate past conduct.”).

As alleged, Plaintiffs are homeless individuals, and the reasonable inference to be drawn from the Complaint is that they continue to be exposed to the City's practice of conducting sweeps, and improperly depriving them of their personal property without notice. While the City attempts to characterize the alleged threat of future injury as a mere “fear” that the Plaintiffs' property will again be unconstitutionally seized and destroyed, the fear is more than speculative. Accepting the allegations as true, the challenged actions are a result of the City's custom or policy and Plaintiffs

are involuntary members of a specific group subject to that custom or policy. As a result, Plaintiffs “cannot avoid exposure to [Defendant’s] challenged conduct” and the alleged practice “presents a substantial likelihood that the alleged injury will occur.” 31 *Foster Children v. Bush*, 329 F.3d 1255, 1266 (11th Cir. 2003); *see also Church v. City of Huntsville*, 30 F.3d 1332, 1338 (11th Cir. 1994) (noting that plaintiffs “are homeless involuntarily,” and concluding that because of the “involuntary nature of their condition, the plaintiffs cannot avoid future exposure to the challenged course of conduct” (internal quotations omitted)). Moreover, it is reasonable to infer from the allegations that Plaintiffs will continue to be exposed to the City’s cleanup sweeps of homeless encampments, such that the threat of future injury is more than “conjectural, hypothetical, or contingent” *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1347 (11th Cir. 1999).

## **ii. Suitability of Injunctive and Declaratory Relief**

The City also argues that injunctive and declaratory relief are improper here. With respect to injunctive relief, the City contends that Plaintiffs cannot make the necessary showing because they allege prior injuries, their claimed anticipated injuries are not actual or imminent, and the requests for injunctive relief and monetary damages are inconsistent as pleaded. Plaintiffs respond that the Complaint sufficiently alleges future injuries, and the availability of other remedies does not render the request for injunctive relief inconsistent with their request for damages.

The City relies on *Lary v. Trinity Physician Financial and Insurance Services*, 780 F.3d 1101 (11th Cir. 2015) and *Swain v. Junior*, 961 F.3d 1276 (11th Cir. 2020) in support of its argument. However, both cases are procedurally and factually distinguishable, and does not support the outcome the City urges. In *Lary*, the plaintiff asserted violations of the Telephone Consumer Protection Act against the defendants, seeking statutory damages and a permanent injunction. 780 F.3d at 1104. The defendants did not defend the case and instead informed the

court that they would accept a default judgment. *Id.* Under those circumstances, the Eleventh Circuit determined that the district court did not err in declining the request for a permanent injunction, because the plaintiff did not establish either a likelihood of future injury or the inadequacy of the legal remedy. *Id.* Here, there is no default, and § 1983 does not provide statutory damages. In *Swain*, the plaintiffs were a group of medically vulnerable inmates who sued the County and director of the correctional department for violating their constitutional rights for their inadequate response to the COVID-19 outbreak. 961 F.3d at 1280. Upon a motion for preliminary injunction, the district court enjoined the defendants to take precautionary measures to halt the spread of COVID and provide regular status reports. *Id.* On appeal, the Eleventh Circuit reversed the preliminary injunction, finding that the plaintiffs’ showing as to their Fourteenth Amendment claim did not support a finding of deliberate indifference. *Id.* at 1289. Importantly, however, Plaintiffs here have not requested a preliminary injunction, and although the City invites the Court to engage in an analysis of the merits of an injunction, it would be improper to do so. As the Court previously explained, Plaintiffs sufficiently allege a threat of future harm, and Plaintiffs need do no more at this juncture for their claim for relief to stand. Plaintiffs are not required to prove their claims at the dismissal stage.

Regarding Plaintiffs’ request for declaratory relief, the City argues that such relief is improper based upon the Complaint’s allegations that seek a “[d]eclaratory judgment that Defendant’s policies, practices and conduct *violated* Plaintiffs rights . . . .” ECF No. [1] at 14 (emphasis added). Thus, the City contends that Plaintiffs improperly seek declaratory relief for past conduct only. Plaintiffs respond that the allegations in the Complaint support a continuing practice and conduct by the City, violating Plaintiffs’ rights under the Fourth and Fourteenth Amendment, and supports their request for declaratory relief. Upon review, the Court agrees with

Plaintiffs. Even though the request for relief contains the word “violated” instead of “violates,” the Complaint alleges facts of a real and continuing dispute. *See Malowney*, 193 F.3d at 1347 (“The plaintiff must allege facts from which the continuation of the dispute may be reasonably inferred. Additionally, the continuing controversy may not be conjectural, hypothetical, or contingent; it must be real and immediate, and create a definite, rather than speculative threat of future injury.”) (citation omitted). Thus, the Court will not dismiss the request under the circumstances.

#### IV. CONCLUSION

It is therefore **ORDERED AND ADJUDGED** that Defendant’s Motion to Dismiss, ECF No. [16], is **DENIED**. The City shall file its Answer **no later than December 16, 2022**.

**DONE AND ORDERED** in Chambers at Miami, Florida, on December 6, 2022.

A handwritten signature in black ink, appearing to read 'Bloom', with a horizontal line extending to the right.

**BETH BLOOM**  
**UNITED STATES DISTRICT JUDGE**

Copies to:

Counsel of Record



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 22-cv-21939-BLOOM/Torres**

LATOYLA YASHEEN COOPER-LEVY,  
*et al.*,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.

/

**OMNIBUS ORDER ON MOTIONS FOR SUMMARY JUDGMENT**

**THIS CAUSE** is before the Court upon Defendant City of Miami, Florida’s (“City” or “Defendant”) Motion for Summary Judgment, ECF No. [82], and Plaintiffs Latoyla Cooper-Levy (“Cooper-Levy”), Phillip Sylverin (“Sylverin”), Sherman Rivers (“Rivers”), and Joseph Simmons (“Simmons”) Motion for Partial Summary Judgment, ECF No. [79]. Plaintiffs filed a Response in Opposition to the City’s Motion, ECF No. [106], to which the City filed a reply, ECF No. [110]. The City filed a Response in opposition to Plaintiffs’ Motion, ECF No. [104], to which Plaintiffs filed a Reply, ECF No. [112].<sup>1</sup> The Court has considered the Motions, all supporting and opposing submissions, the record in this case, the applicable law, and is otherwise fully advised. For the reasons that follow, the Motions are denied.

<sup>1</sup> In addition, Plaintiffs submitted a Statement of Material Facts in Support of their Motion, ECF No. [78] (“Pls.’ SMF”), a Counterstatement of Material Facts in their Response to Defendant’s Motion, ECF No. [105] (“Pls.’ CSMF”), and a Reply Statement of Material Facts in Support of their Motion, ECF No. [111] (“Pls.’ RSMF”). The City submitted a Statement of Material Facts in Support of their Motion, ECF No. [82] (“Def.’s SMF”), a Counterstatement of Material Facts in their Response to Defendant’s Motion, ECF No. [103] (“Def.’s CSMF”), and a Reply Statement of Material Facts in Support of their Motion, ECF No. [109] (“Def.’s RSMF”).

## **I. BACKGROUND**

The Court assumes the parties' familiarity with the facts of this case but provides a summary of the material and background facts.<sup>2</sup> This case arises from the City's alleged violations of homeless individuals' constitutional rights. Plaintiffs, all of whom are or have been homeless individuals, commenced this case by filing their Complaint pursuant to 42 U.S.C. § 1983, asserting two claims for violations of their Fourth and Fourteenth Amendment rights. *See generally* ECF No. [1].

### **A. Material Facts**

The following facts are undisputed unless otherwise noted.

#### **i. APM**

The City has an administrative policy, APM 1-19 ("the APM"), that governs the treatment by City personnel of homeless persons' property. Pls.' SMF ¶ 4 (citing ECF No. [74-1] Ex. 3); Def.'s CSMF ¶ 4. All City personnel, including police officers, are required to follow the APM. Pls.' SMF ¶ 10; Def.'s CSMF ¶ 10. The purpose of the APM is to establish a standard practice for the handling, temporary storage, and disposition of property belonging to homeless persons. Pls.' SMF ¶ 5; Def.'s CSMF ¶ 5.

#### **a. Definitions**

The APM defines "Homeless Person's Property", or "Homeless Property" as personal property known to belong to a homeless person, or readily recognizable as property of a "Homeless Person",<sup>3</sup> such as bedding, clothing or other belongings organized or packaged

<sup>2</sup> The Court previously set forth the history of this action, which stems from the litigation in *Pottinger v. City of Miami*, 359 F. Supp. 3d 1177, 1179 (S.D. Fla. 2019), and the factual allegations in the Complaint, in its Order on the City's Motion to Dismiss. *See generally* ECF No. [23].

<sup>3</sup> The Court adopts the parties' appellation for individuals who are "homeless." According to the APM, a homeless person is a person who lacks a fixed, regular, and adequate night-time residence and has a primary night-time residency that is: (a) supervised publicly or privately operated shelter designed to

together in a way indicating it has not been abandoned. Pls.’ SMF ¶ 6; Def.’s CSMF ¶ 6. The APM does not define abandoned property, specify how abandoned property is identified, or set forth procedures concerning such property. Homeless Property includes “personal items”, which include items such as “identification, medicines and eyeglasses and other small items of importance identified by the Homeless Person or readily identifiable as intimate personal property.” ECF No. [74-1] at 197. The APM requires that all homeless persons who wish to identify their personal property place a tag or label with their name and contact information on the outside of any such property. *Id.* The APM further defines “Contaminated or Dangerous Items” as those items that present a hazard to the health and safety of City Personnel or the public. APM-1-19 at 1, ECF No. [80-1]. Contaminated or Dangerous Items include “hazardous materials, flammable materials . . . , fabric contaminated with human or animal waste, fabric contaminated with flammable substances . . . [and] wet fabric (mold hazard)[.]” *Id.* The APM sets forth procedures for “City personnel” during “Cleanup operations”. *Id.* § IV.<sup>4</sup>

***b. APM Procedures***

The APM requires City personnel to place notices of Cleanup operations prior to the Cleanup date. Pls.’ SMF ¶ 86; Def.’s CSMF ¶ 86. An August 2021 amendment reduced the APM’s requirement that there be seven (7) days’ notice given before a Cleanup operation to seventy-two (72) hours. Pls.’ SMF ¶ 9 (ECF No. [74-1] Ex. 3); Def.’s CSMF ¶ 9. The APM

provide temporary living accommodations; (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

APM-1-19 at 1. The APM excludes from its definition of homeless persons those who are imprisoned or otherwise detained pursuant to an Act of Congress or a state law. *Id.*

<sup>4</sup> In addition, the Miami Police Department (MPD) has a Departmental Order (“PDO”) which states that it is the MPD’s policy to “ensure that personnel are sensitive to the needs and rights of our Homeless population, as well as knowledgeable of the department’s arrest policies concerning such persons.” ECF No. [74-1] at 261-65. The APM provides that in case of any conflict between the provisions of the APM and the PDO, police officers are to follow the latter. Pls.’ SMF ¶ 12; Def.’s CSMF ¶ 12.

requires that the notices provide the date of the Cleanup operation and the phone number and address of the Veterans Affairs/Homeless Assistance Program Division in the Department of Human Services (DHS) where any collected Homeless Property can be retrieved. Pls.' SMF ¶ 87; Def.'s CSMF ¶ 87.

During a Cleanup operation, the APM provides procedures for when a homeless individual is present and when Homeless Property appears to be unattended. In the former case, City personnel will inform the Homeless Person that the Cleanup operation is about to commence and request they relocate themselves with their Homeless Property. ECF No. [74-1] at 199. City personnel will ask if the Homeless Person would agree to voluntarily discard property, requesting that they sign a Waiver for Voluntary Disposal of Property Form. *Id.* For any Homeless Property that the Homeless Person does not move, "cannot be left on the site," and is not a Contaminated or Dangerous item, such property shall be "documented, secured, and stored by City personnel" for a period of ninety (90) days, after which unclaimed property will be disposed. *Id.* When Homeless Property is secured and stored, the Homeless Person is asked to sign an Inventory Storage Form. *Id.*

In the latter case, City personnel are to collect Homeless Property that is not contaminated or dangerous for a period of 90 days, after which the property is discarded if unclaimed. *Id.* Prior to storing Homeless Property, City personnel must complete an Inventory Storage Form. *Id.* If the unattended Homeless Property does not have a tag or label indicating its owner, the City will post a notice at the location where the property was discarded or stored. *Id.*

The APM states that any items that are contaminated or otherwise pose a health hazard or obvious safety issue will be disposed of according to this policy. *Id.*

David Rosemond fulfills a role at the City which provides “strategic coordination” to the Homeless Empowerment Assistance Team (HEAT), testified that City personnel “leave property at [a] location” in a manner that is consistent with “the spirit of the APM”. Tr. of Jan. 11, 2023 Dep. of David Rosemond (“Rosemond Dep.”) at 10:22-11:2, 67:13-21. None of the City’s personnel has been warned, disciplined, or fired for violating the APM. Pls.’ SMF ¶ 130; Def.’s CSMF ¶ 130.

**ii. The HEAT**

To implement the APM’s procedures, the City created the Homeless Empowerment Assistance Team (HEAT), which conducts Cleanup operations at homeless encampments, defined as “ten . . . or more unsheltered homeless individuals living in relatively close proximity to one another.” Pls.’ SMF ¶¶ 18, 20; Def.’s CSMF ¶¶ 18, 20; Tr. of Nov. 14, 2022 Dep. of Conrad Chin-Quee at 360, ECF No. [74-3].

The HEAT is comprised of the members of the MPD, DHS, and the Solid Waste department. Pls.’ SMF ¶ 19; Def.’s CSMF ¶ 19. The HEAT was staffed with four MPD officers and one MPD sergeant at its inception, but the number of police officers in the HEAT increased to eight (8) MPD officers and two (2) sergeants. Pls.’ SMF ¶¶ 28, 29; Def.’s SMF ¶ 28, 29. During Cleanup operations, MPD officers provide security, traffic control, enforcement, and conduct background checks to determine eligibility for shelter. Pls.’ SMF ¶ 21; Def.’s CSMF ¶ 21. The City does not obtain warrants prior to conducting Cleanup operations. Pls.’ SMF ¶ 22; Def.’s CSMF ¶ 22. MPD officers in the HEAT may arrest homeless persons during Cleanup operations if that person has an outstanding arrest warrant. Pls.’ SMF ¶¶ 24-25; Def.’s CSMF ¶¶ 24-25. The parties dispute whether the MPD is responsible for organizing and determining the location of Cleanup operations and for documenting activity at Cleanup operations, including by taking “before” and “after” photographs and preparing reports. Pls.’ SMF ¶¶ 26-27; Def.’s

CSMF ¶¶ 26-27. The parties agree that DHS coordinates the dissemination of notices of Cleanup operations, provides outreach, “wrap around” services, and shelter placement to homeless persons. Pls.’ SMF ¶ 30; Def.’s CSMF ¶ 30.

In addition, the HEAT includes personnel identified as Green Shirts, whose main role is to engage Homeless Persons that are at an encampment during a Cleanup operation, “offer assistance,” and go through ostensibly abandoned property to look for personal belongings that should be stored. Tr. of Nov. 9, 2022 Dep. of Lazaro Trueba (“Trueba Dep.”) at 124:24-125:6, ECF No. [74-16].

As part of Cleanup operations, the members of the HEAT from Solid Waste operate a street sweeper, combination cranes, front loaders, water trucks and garbage trucks. Pls.’ SMF ¶¶ 35, 123; Def.’s CSMF ¶¶ 35, 123. The activities that occur during Cleanup operations include picking up debris, garbage, sweeping the streets, and spraying Homeless encampments with water and disinfectant. *See* Pls.’ SMF ¶¶ 35-37; Def.’s CSMF ¶¶ 35-37.

### **iii. Evidence of the City’s Policy, Custom or Practice**

#### ***a. Notices Prior to Cleanup Operations***

The City has used various forms of notices of Cleanup operations over time. Pls.’ SMF ¶ 88; Def.’s CSMF ¶ 88. The first version of the notice was a yellow vinyl with adhesive; the parties dispute whether the ink on the notices, and the notices themselves, can withstand the elements. *See* Pls.’ SMF ¶ 89; CSMF ¶ 89. The first version of the notice in the English language states in part as follows:

NOTICE  
BE ADVISED THAT THIS AREA WILL BE CLEANED ON  
...  
**PLEASE REMOVE ANY PERSONAL BELONGINGS FROM THE SITE.**

IF YOU WOULD LIKE TO RELOCATE TO EMERGENCY HOUSING,  
PLEASE CALL 305.960.4980 (HELP) OR CONTACT THE OUTREACH  
WORKERS WHOM *[sic]* WILL BE VISITING THE AREA FREQUENTLY

**THANK YOU**

ECF No. [74-11] at 267. The record supports that the City has posted those yellow vinyl notices on signs, concrete walls, and chain-link fences in the vicinity of homeless encampments, in some cases multiple times. *See* ECF No. [74-11] at 266-278. There are occasions when the City posts a notice of a Cleanup operation for a certain day but does not conduct a Cleanup operation that day. Pls.’ SMF ¶ 95; Def.’s CSMF ¶ 95. The City started using a new version of the notice in November 2021. Pls.’ SMF ¶ 90; Def.’s CSMF ¶ 90. The City’s notices of upcoming Cleanup operations do not provide the address where the City stores property. Pls.’ SMF ¶ 92; Def.’s CSMF ¶ 92.

***b. Contaminated Property***

City personnel use the definition of “Contaminated or Dangerous Items” in the APM when determining whether property is contaminated. Pls.’ SMF ¶ 100; Def.’s CSMF ¶ 100. In practice, members of the HEAT may determine if property is contaminated. Pls.’ SMF ¶ 102; Def.’s CSMF ¶ 102. The parties dispute whether contaminated property is discarded once it is identified. Pls.’ SMF ¶ 105 (citing ECF No. [74-1] at 66:15-18; ECF No. [74-15] at 67:24-5, 69:12-16; ECF No. [74-2], ECF No. [74-2] at 51:22-52:25; Trueba Dep. at 50:5-7, 91:5-7; Rosemond Dep. at 57:23-6; ECF No. [74-6] at 122:4-11; ECF No. [74-17] at 83:23-84:1, 85:21-23, 95:4-13; ECF No. [74-8] at 62:12-16; ECF No. [74-18] at 90:1-15; McLean Dep. at 82:3-12); Def.’s CSMF ¶ 105 (citing ECF No. [74-4] at 115:15-116:1-17; Trueba Dep. at 53:1-5, 62:24-63:2; ECF No. [74-2] at 51:11-54:15; McLean Dep. at 87:6-16; ECF No. [74-8] at 70:17-72:12, 73:11-74:15; Rosemond Dep. at 216:21-217:3, 218:17-219:5; ECF No. [74-17] at 174:1-176:5). However, the testimony by Christian Candalier, a Homeless Outreach Specialist, indicates that

property that contains mold, “has an unknown liquid, human or animal waste”, “flammable stuff, detergent, [and] whatever . . . could be . . . considered contaminated”, and therefore may be discarded. Tr. of Mar. 24, 2023 Dep. of Christian Candales (“Candales Dep.”) at 52:12-19, ECF No. [74-2].

***c. Abandoned Property***

Sergio Torres, a Homeless Program Administrator, testified that the determination of whether Homeless Property is abandoned is one based on “common sense.” Tr. of Dec. 13, 2022 Dep. of Sergio Torres (“Torres Dep.”) at 44:5-19, 45:9-46:20, ECF No. [74-15]. Christian Candaler, a Homeless Outreach Specialist, testified that City personnel look for “clear signs” that property is abandoned. For example, City personnel will ask Homeless Persons in the vicinity of unattended property to whom the property belongs; if Homeless Persons in the vicinity indicate, in sum and substance, that the property has “been [at the location] for days[,] [a]nd nobody has touched it[,]” that is a “clear sign” of abandonment. Candales Dep. at 52:9-25. In addition, if the HEAT observe that unattended property has been at a location for two days, the HEAT will not disturb the property; but if the property is unattended on the third day, that is also “a clear indication that it’s abandoned.” *Id.* On the other hand, Rosemond testified that even if property “appears to be abandoned,” or is unattended “for days,” the City’s default is not to seize the property. Rosemond Dep. at 218:25-219:2.

In practice, property that is determined to be abandoned may be disposed of. Pls.’ SMF ¶ 117; Def.’s CSMF ¶ 117.

***d. Storage of Homeless Property***

Green Shirts store property and fill out Inventory Storage Forms. Pls.’ SMF ¶ 138; Def.’s CSMF ¶ 138. There are sixty-five (65) Storage Inventory Forms in the record. Pls.’ SMF ¶ 145; Def.’s CSMF ¶ 145. Twelve (12) of the completed Storage Inventory Forms are illegible. Pls.’



SMF ¶ 146; Def.'s CSMF ¶ 146. Thirty-six (36) of the Storage Inventory Forms list the location where the property listed on the Forms was found. Pls.' SMF ¶ 147; Def.'s CSMF ¶ 147. The date on which property that is listed on the Forms was stored is missing on twenty (20) of those Forms. Pls.' SMF ¶ 148; Def.'s CSMF ¶ 148. Of the Inventory Storage Forms for which the dates are legible, one Form is from 2018, ten are from 2019, three are from 2021, three are from 2022, and thirteen are from 2023. Pls.' SMF ¶ 149; Def.'s CSMF ¶ 149. The record also contains thirty-seven (37) handwritten notes that list property. Pls.' SMF ¶ 150; Def.'s CSMF ¶ 150. Of those notes, eighteen (18) only list property without identifying information, such as the owner's name, a location in which the property was secured, or a date. Pls.' SMF ¶ 153; Def.'s CSMF ¶ 153. Eight other lists identify only the property and a date. Pls.' SMF ¶ 154; Def.'s CSMF ¶ 154. One of the handwritten notes has only a first name listed on it and no location or date. Pls. SMF ¶ 155; Def.'s CSMF ¶ 155. None of the handwritten notes identifies the City employee who secured the property. Pls.' SMF ¶ 156; Def.'s CSMF ¶ 156.

Items that are wet are not stored. Pls.' SMF ¶ 140; Def.'s CSMF ¶ 140. Officer Leighton McLean testified that there's a limit to the amount of Homeless Persons' property that the City can store. *See* Tr. of June 21, 2023 Dep. of Officer Leighton McLean ("McLean Dep.") at 116:3-9, ECF No. [74-7].

***e. Disposal of Homeless Property***

Solid Waste collects property to be disposed of at Cleanup operations and afterward takes the property to a county facility. Pls.' SMF ¶ 124; Def.'s CSMF ¶ 124. The parties dispute whether the City notifies Homeless Persons of the property it stores or discards after Cleanup operations. Pls.' SMF ¶ 126; Def.'s CSMF ¶ 126. Rosemond testified that he did not know what steps the City takes to provide notice to an owner of property that his or her property was disposed of. Rosemond Dep. at 68:1-69:3. But Rosemond's testimony also indicates that

property that is unattended, versus abandoned, is not treated as abandoned property. *See id.* at 69:4-70:2. Moreover, the record indicates that the City has stored—as opposed to discarded—unattended Homeless Property; in at least one instance involving a shopping cart that contained several items, the City has posted a notice that states in part: “[t]his shopping cart has been removed from the premises. To claim it[,] please go to 450 SW 5 Street or call at 1 877 994 4357.” ECF No. [74-11] at 293.

***f. Voluntary Disposal of Homeless Property***

The City does not use the Waiver for Voluntary Disposal of Property Form. Pls.’ SMF ¶ 159; Def.’s CSMF ¶ 159. The City does not maintain a filing system of a homeless person’s written consent to voluntarily dispose of their property that is searchable by that person’s name Pls.’ SMF ¶ 160; Def.’s CSMF ¶ 160. The Waiver for Voluntary Disposal of Property Forms are not used because “to spend time documenting something to say that we are throwing away garbage seems to be contrary to the objective of this mission, which is to try to get people off the street.” Rosemond Dep. at 80:2-25.

**iv. Evidence of Plaintiffs’ Property Loss During Cleanup Operations**

***a. Cooper-Levy***

Cooper-Levy is a thirty-five (35) year old woman who was homeless until at least July 27, 2023. Pls.’ SMF ¶ 40; Def.’s CSMF ¶ 40. The parties dispute whether the City discarded Cooper-Levy’s property while she was at work in May 2021. Pls.’ SMF ¶ 42; Def.’s CSMF ¶ 42. In May 2021, Cooper-Levy was homeless, residing in an encampment outside a shelter in the vicinity of “Sister Teresa” “off 27 and something” in the Overtown neighborhood. Tr. of July 27, 2023 Dep. of Latoyla Yasheen Cooper-Levy (“Cooper-Levy Dep.”) at 40:10-41:4, ECF No. [74-5]. Cooper-Levy testified that a homeless man called her on the phone while she was at her place of employment, explaining that the City was “throwing [out] people[’s] property [and] that [she]

should hurry up and come off where [she's] at and come and get [her] stuff before [the City] . . . disposed [of] it.” *Id.* at 54:21-55:12. Cooper-Levy requested of her manager to leave her work to get her property; however, by the time she returned to the vicinity of Sister Teresa, her property “was all gone.” *Id.* at 55:12-18. Prior to her property disappearing, Cooper-Levy did not see a notice of the Cleanup operation, but afterward she saw a notice on the ground in the vicinity of the encampment. *Id.* at 81:8-22. Cooper-Levy testified that she had never experienced a Cleanup operation like the one that occurred in May 2021 before. *See* Cooper-Levy Dep. at 63:22-64:17.

Cooper-Levy further testified her missing property included an urn with her mother’s ashes, U.S. passport, birth certificate, Social Security card, identification, work uniform, non-slippery shoes, and a tent. Cooper-Levy Dep. at 65:25-70:20. The City did not store an urn with ashes in its storage unit. Pls.’ SMF ¶ 49, Def.’s CSMF ¶ 49.

***b. Simmons***

Simmons is sixty-three (63) years old and has been homeless in Miami for unspecified periods of time for twenty-one (21) years. Pls.’ SMF ¶ 50; Def.’s CSMF ¶ 50. Simmons testified that the MPD threw away his property in 2021 that was in the vicinity of “11th Street” when he was living “near 7 and 10” “under the bridge.” Tr. of Dep. of Joseph Simmons (“Simmons Dep.”) at 17:24-25, 18:15-16. ECF No. [74-13]. The parties dispute whether the City seized Simmons’s property on the August 2, 2021 Cleanup operation. Pls.’ SMF ¶¶ 51-53; Def.’s CSMF ¶¶ 51-53. Simmons believes that MPD disposed of his property because the individuals who threw away his property had City of Miami badges. *Id.* at 18:22-25. However, Simmons later admitted that he had not seen the MPD throwing away his property. *Id.* at 42:3-7. Rather, a third person told Simmons his property had been discarded. *Id.* at 42:19-23.

Simmons testified his property was not “contaminated” or wet. Pls.’ SMF ¶ 56; Def.’s CSMF ¶ 56. He also testified that he kept all his property “together.” Simmons Dep. at 51:10-18.

Simmons testified that he is familiar with the City's notices, which are pieces of paper notifying that the City would conduct a Cleanup operation on a particular day. Simmons Dep. at 45:21-25. Simmons recalls seeing twenty (20) notices on the day that his property disappeared but did not see any notices in the week prior to his property's disappearance. *Id.* at 46:23-47:11. Simmons claims the following property was destroyed: one tent, clothes, furniture, medication, glasses, dentures, identification documents, a coin and stamp collection, and jewelry. ECF No. [74-13] at 74. The City did not store Simmons's dentures or his coin and stamp collection in a storage unit. Pls.' SMF ¶¶ 60-61; Def.'s CSMF ¶¶ 60-61. The parties dispute whether the City had discarded Simmons' property "on other occasions." Pls.' SMF ¶ 62; Def.'s CSMF ¶ 62. Simmons' testimony indicates that the August 2, 2021 Cleanup was the first time his property had been discarded. *See* Simmons Dep. at 39:11-43:8.

*c. Rivers*

Rivers is sixty-two (62) years old and homeless. Pls.' SMF ¶ 63; Def.'s CSMF ¶ 64. At the relevant time, Rivers resided in a homeless encampment on "10th Street and 3rd Avenue." Tr. of Dep. of July 11, 2023 Sherman Rivers ("Rivers Dep.") at 7:24-8:7, ECF No. [74-10]. Rivers testified that, on August 2, 2021 at lunchtime, he observed a crane picking up his belongings, including his tent and the contents therein, and putting those belongings in a truck and/or "in the garbage." *Id.* at 40:1-41:3, 48:12-21. However, Rivers testified that his tent was "[m]issing" when he returned to his encampment. *Id.* at 77:12-14. The parties dispute whether Rivers' property was within the area designated by the City for a Cleanup operation on August 2, 2021. Pls.' SMF ¶¶ 65-66; Def.'s CSMF ¶¶ 65-66. Rivers' testimony also indicates that City officials said his belongings were contaminated. Rivers Dep. at 41:4-10. However, Rivers asserted that his property did not stink or have mildew. *Id.* at 117:20-118:3. Rivers testified that he kept his property neat and clean, and cleaned the area around his tent. *Id.* at 105:21-106:7.

The City did not store \$60.00 in coins belonging to Rivers in its storage unit. Pls.’ SMF ¶ 71; Def.’s CSMF ¶ 71.

*d. Sylverin*

Sylverin is forty-four (44) years old and was homeless as late as 2021. Pls.’ SMF ¶ 74; Def.’s CSMF ¶ 74. Sylverin testified that in 2021 he lived somewhere “between 11th or 10th” by the “Brightline area” near Overtown. Tr. of July 13, 2023 Dep. of Philip Sylverin (“Sylverin Dep.”) at 24:22-25:25, ECF No. [74-14]. On August 2, 2021 at 9:00 a.m., an MPD officer woke Sylverin to effectuate a Cleanup operation and instructed him to grab what he could carry. Tr. of July 13, 2023 Dep. of Philip Sylverin (“Sylverin Dep.”) at 82:11-14, ECF No. [74-14]. At the time, Sylverin used a wheelchair for mobility. Pls.’ SMF ¶ 77; Def.’s CSMF ¶ 77. Sylverin testified that the August 2, 2021 Cleanup was unlike any prior Cleanup operation that he had experienced. Sylverin Dep. at 90:17-91:9; 93:4-25, 98:20-99:1.

Sylverin testified he did not know the City was coming to his encampment to conduct a Cleanup on August 2, 2021. Pls.’ SMF ¶ 78; Def.’s CSMF ¶ 78. Sylverin did not see Cleanup notices the week of August 2, 2021. Pls.’ SMF ¶ 79; Def.’s CSMF ¶ 79. Sylverin testified that his property was discarded during the August 2, 2021 Cleanup. Sylverin testified that he owned four cats; and that a cat died during a Cleanup operation, though the parties dispute whether the cat belonged to Sylverin. Pls.’ SMF ¶ 83; Def.’s CSMF ¶ 83. Sylverin testified that he kept the area around his property clean. Pls.’ SMF ¶ 81; Def.’s CSMF ¶ 81. The parties dispute whether the City disposed of Sylverin’s mattress, couch, table, and chairs. Pls.’ SMF ¶ 121; Def.’s CSMF ¶ 121. Sylverin testified that property was taken from him within the six months prior to July 13, 2023. Pls.’ SMF ¶ 84; Def.’s CSMF ¶ 84.

## II. LEGAL STANDARD

A court may grant a motion for summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The parties may support their positions by citations to materials in the record, including depositions, documents, affidavits, or declarations. *See* Fed. R. Civ. P. 56(c). “A factual dispute is ‘material’ if it would affect the outcome of the suit under the governing law, and ‘genuine’ if a reasonable trier of fact could return judgment for the non-moving party.” *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1243 (11th Cir. 2008) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)).

A court views the facts in the light most favorable to the non-moving party, draws “all reasonable inferences in favor of the nonmovant and may not weigh evidence or make credibility determinations[.]” *Lewis v. City of Union City, Ga.*, 934 F.3d 1169, 1179 (11th Cir. 2019); *see also Crocker v. Beatty*, 886 F.3d 1132, 1134 (11th Cir. 2018) (“[W]e accept [the non-moving party’s] version of the facts as true and draw all reasonable inferences in the light most favorable to him as the non-movant.” (citation omitted)). “The mere existence of a scintilla of evidence in support of the [non-moving party’s] position will be insufficient; there must be evidence on which a jury could reasonably find for the [non-moving party].” *Anderson*, 477 U.S. at 252. “If more than one inference could be construed from the facts by a reasonable fact finder, and that inference introduces a genuine issue of material fact, then the district court should not grant summary judgment.” *Bannum, Inc. v. City of Fort Lauderdale*, 901 F.2d 989, 996 (11th Cir. 1990) (citation omitted).

### III. DISCUSSION

#### A. Defendant's Motion

The City contends “[t]here are serious doubts regarding the Plaintiffs’ averments that a widespread and pervasive custom exists, on whether the incidents were isolated occurrences, and whether a constitutional violation actually transpired.” ECF No. [82] at 2 n.2. Nevertheless, the City maintains that summary judgment on all Counts is warranted because the record is devoid of evidence that the City had either a custom or policy of seizing and destroying the property of homeless people. Specifically, the City submits there is no factual dispute that the City Manager was involved with or had knowledge of the Cleanup operation’s practices, except to issue the APM. ECF No. [82] at 7. To sustain a finding of the City’s liability under Section 1983, the City submits that Plaintiffs must prove that the City was the “moving force” behind the deprivation of Plaintiffs’ rights that caused their injuries. *Id.* at 4. The City argues that Plaintiffs cannot do so because they cannot show that a final decisionmaker caused their injuries through repeated acts perpetrated with deliberate indifference to the acts’ known and obvious consequences. *Id.* at 3-7.

Plaintiffs respond that there are several other ways for Plaintiffs to establish a municipal government’s liability under Section 1983: a municipality may be the “moving force” behind a deprivation of constitutional rights based on (1) an official policy—such as a rule or regulation—that is enacted by its legislative body, (2) the municipality’s informal practices (or course of conduct) that are so widespread and pervasive as to carry the force of law, or (3) ratification by a final policymaker of a subordinate’s decision or policy statement. *See* ECF No. [106] at 3-4.

More specifically, Plaintiffs first assert that the City’s promulgation, via the City Manager, of APM-1-19, and the City’s legislative body’s enactment of three resolutions in April 2021 and September 2021, are official policies that expose the City to liability for Fourth

Amendment violations. *Id.* at 4-7. Second, Plaintiffs maintain that evidence supports the City has a policy—the APM—and customs that violate the Due Process Clause of the Fourteenth Amendment. *Id.* at 7-11. Plaintiffs further respond that they are not required to show that a final decisionmaker acted with deliberate indifference because that requirement applies only where a plaintiff claims a municipality’s failure to train staff or negligently hire them. *Id.* at 11-12. Finally, Plaintiffs state that there are factual disputes that undermine the City’s arguments: (1) whether the City has a widespread custom of failing to store property, (2) whether the City posts notices in a manner reasonably calculated to notify homeless individuals that the City will store or dispose of property after a sweep, (3) whether the City provides notice that it has seized property, and (4) whether the City unreasonably discards property it deems to be contaminated or abandoned. *Id.* at 13-14.<sup>5</sup>

The City first replies that Plaintiffs are improperly attempting to amend their Complaint because the Complaint only alleges that the City engaged in practices that violate Section 1983, not that the City’s written policies give rise to Section 1983 liability. ECF No. [110] at 4. Second, the City contends that summary judgment should be awarded to the extent Plaintiffs’ arguments in its Response are not supported within its Counterstatement of Material Facts because it is procedurally improper for Plaintiffs to rely on their other submissions. *Id.* at 5.

<sup>5</sup> Plaintiffs contend that the City has “an officially-adopted policy of permitting a particular constitutional violation” that is “inherent” in the APM and “amplified” by City resolutions, citing *Grech v. Clayton County, Georgia*, 335 F.3d 1326, 1330 (11th Cir. 2003) (*en banc*). ECF No. [106] at 4-5, 8. But *Grech* does not support this contention. *Grech* concerned whether a particular municipal official was a policymaker. *Grech v. Clayton Cnty., Ga.*, 335 F.3d 1326, 1330 (11th Cir. 2003). The court found the official was not a policymaker. *Id.* at 1344-48. Plaintiffs identify no legal authority that a municipal policy concerning homeless encampments is *per se* violative of the constitutional rights of the homeless, or that the language of the APM is unlawful. To the contrary, the case law cited in the briefing supports that a City may implement health and safety measures concerning homeless property like those set forth in the APM, including measures to destroy personal property that is contaminated or otherwise poses a health hazard or obvious safety issue to City workers or members of the public. *Peery v. City of Miami*, 977 F.3d 1061, 1070 (11th Cir. 2020). As such, Plaintiffs’ argument on this point is conclusory, not meritorious, and unpersuasive.



Third, the City replies to the arguments in Plaintiffs' response *seriatim*. See generally *id.* at 5-16. Relevant to Plaintiffs' argument that the City has a widespread custom that violates Section 1983, the City points out that Plaintiffs' Counterstatement of Material Facts contains no facts, undisputed or otherwise, that describe the City's sweep protocols, the dates of the City's practices, or whether those protocols adhere to or are contrary to the APM. *Id.* at 9. Moreover, the evidence undermines the existence of an unofficial widespread custom because the evidence suggests the City's approach in its sweeps were inconsistent. *Id.* at 10.

Further, the City maintains the deliberate indifference standard applies even in cases where a plaintiff alleges a deliberate action in violation of section 1983. ECF No. [110] at 11-12. The City argues that liability for an official written policy requires a showing that a municipality's legislative body or authorized decisionmaker intentionally deprived a plaintiff of a federal protective right but submits that Plaintiffs have adduced no evidence of such intent. *Id.* at 12. The City adds that Plaintiffs have offered no evidence that the City's written policies have caused their injuries either. *Id.*

#### **i. The City's Procedural Arguments**

As a preliminary matter, the Court disagrees with the City that Plaintiffs are improperly attempting to amend their Complaint through their Response. In the City's view, Plaintiffs' contention that the City's written policies are the root problem in this action was not "a theory they advanced in their Complaint" and may not be advanced at this stage. ECF No. [110] at 2. However, "under the Federal Rules of Civil Procedure, a complaint need not pin a plaintiff's claim for relief to a precise legal theory." *Gregory v. Quality Removal, Inc.*, No. 14-21480-CIV, 2014 WL 5494448, at \*4 (S.D. Fla. Oct. 30, 2014) (quoting *Skinner v. Switzer*, 562 U.S. 521, 530 (2011) (citing Fed. R. Civ. P. 8(a)(2))). Rather, the issue is whether Plaintiffs' Complaint sufficiently notified the City of a plausible section 1983 claim. The Complaint does so. As the

Court stated in its Order on the City's Motion to Dismiss, the instant action asserts claims under Section 1983 for violations of Plaintiffs' rights under the Fourth Amendment and the Due Process Clause that are predicated, in part, on four separate incidents during which the City discarded their property. *See generally* ECF No. [23]. As such, to the extent Plaintiffs have developed theories of liability based on the discovery in this case, that development is proper. *Gilmour v. Gates, McDonald and Co.*, 382 F.3d at 1312 (11th Cir. 2004), a case on which the City relies, is not to the contrary. There, the court held that a new claim could not be raised in response to a summary judgment motion. *Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004). Such is not the case here.

The Court also rejects the City's argument that summary judgment is warranted because Plaintiffs failed to point to record evidence in its Counterstatement of Material facts. On a summary judgment motion, a non-movant must support his or her assertions by citing to particular parts of materials in the record. Fed. R. Civ. P. 56(c)(1). Although Plaintiffs incorporate by reference their own motion, that is not a violation of the SDFL Local Rules, *see generally* S.D. Fla. L.R. 56.1, and this is not a case where the Court had to "scour" the record since the Court was able to review Plaintiffs' Statement of Material Facts for material facts. *Cf. Joseph v. Napolitano*, 839 F. Supp. 2d 1324, 1329 (S.D. Fla. 2012) (explaining that Local Rule 56.1 reflects "a clear policy that it is **not** the court's obligation to scour the record for a factual dispute that precludes summary judgment") (emphasis in original).

Thus, the Court will first address whether action by a final policymaker is necessary to a finding of liability under Section 1983. The Court will then determine whether record evidence supports the existence of a municipal policy or custom. The Court then considers whether the deliberate indifference requirement applies in this case.

**ii. Municipal Custom or Policy**

To prove a claim under 42 U.S.C. § 1983, a plaintiff must show that he was (1) deprived of a right (2) secured by the Constitution or laws of the United States and (3) that the alleged deprivation was committed under color of state law. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (“*Brown*”); *Rayburn v. Hogue*, 241 F.3d 1341, 1348 (11th Cir. 2001). A plaintiff must also show that (4) the deprivation of his federal right was attributable to the enforcement of a municipal custom or policy. *See Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978); *Buckner v. Toro*, 116 F.3d 450, 452 (11th Cir. 1997).

Importantly, a municipality is not liable under § 1983 based on *respondeat superior*. *See Monell*, 436 U.S. at 691; *Brown*, 520 U.S. 397, 403 (1997) (“a municipality may not be held liable under § 1983 solely because it employs a tortfeasor.”). Instead, a municipality is only liable under § 1983 “when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.” *Monell*, 436 U.S. at 694. This requires that “a plaintiff seeking to impose liability on a municipality under § 1983 . . . identify a municipal ‘policy’ or ‘custom’ that caused the plaintiff’s injury.” *Brown*, 520 U.S. at 403.

Indeed, “the requirement of a municipal policy or custom constitutes an essential element of a § 1983 claim that a plaintiff must prove in order to establish municipal liability.” *Buckner*, 116 F.3d at 453; *see Flowers v. Patrick*, 869 F. Supp. 2d 1331, 1334-35 (M.D. Ala. 2012) (“a plaintiff’s complaint against a municipality [must] ‘contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.’” (quoting *Randall v. Scott*, 610 F.3d 701, 707 n.2 (11th Cir. 2010))). A policy or custom “can be either a written custom or policy, such as an ordinance, or an unwritten practice that is so

widespread and ‘so permanent and well settled as to constitute a custom or use with the force of law.’” *Flowers*, 869 F. Supp. 2d at 1334-35 (quoting *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988)).

***a. Final Policymaker***

The City’s opening memorandum misconstrues the governing law; as Plaintiffs correctly observe and the City concedes in its Reply, the Eleventh Circuit has stated that “not all theories of municipal liability under § 1983 require (or depend on) a single final policymaker.” *Hoefling v. City of Miami*, 811 F.3d 1271, 1279 (11th Cir. 2016). For instance, a municipality may be held liable if a plaintiff can show that the municipality’s officials acted pursuant to a widespread municipal practice, regardless of a final policymaker’s decision. *See Brown v. Neumann*, 188 F.3d 1289, 1290 (11th Cir. 1999) (“an entity can be held monetarily liable only through a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers, *or* for constitutional deprivations visited pursuant to governmental custom even though such a custom has not received formal approval through the body’s official decisionmaking body.”) (emphasis added; cleaned up). As such, if the record supports that the City is liable based on one or more of the City’s customs, summary judgment is not warranted. *See, e.g., Godby v. Montgomery Cnty. Bd. of Educ.*, 996 F. Supp. 1390, 1407 (M.D. Ala. 1998) (denying summary judgment where evidence supported school board had long-standing and widespread practice violative of § 1983).<sup>6</sup>

<sup>6</sup> Plaintiffs contend that the City violated § 1983 for many reasons, including on account of the acts of a decisionmaker. *See generally* ECF No. [106] at 6. As noted, however, Plaintiffs elected to incorporate their arguments and citations to the record from their submissions in support of their Motion. However, unless the Court grants summary judgment on Defendant’s Motion, the better approach would be for the Court to consider Plaintiffs’ arguments to the extent it is necessary to do so when addressing their Motion, rather than considering those arguments in deciding the Defendant’s Motion.

In its Order on Defendant’s Motion to Dismiss, the Court found the Complaint adequately alleged that Plaintiffs’ rights in their property were deprived due to the City’s widespread practice of seizing and destroying personal property without providing adequate notice—whether before or after a seizure—or an opportunity for the owners to recover their property. ECF No. [23] at 10. Those allegations include that the City has a practice that stems from, but is inconsistent with, the APM in several ways. *See* Compl. ¶ 32 (“The City’s practice and custom of how it treats the personal property of homeless individuals differs from the written policy outlined in APM-1-19 and PDO 11, Ch. 10.”). In making that determination, the Court relied on *Hoefling*, a case where the Eleventh Circuit held a plaintiff, who alleged that his sailboat was unlawfully seized and destroyed, adequately alleged the City had a policy, custom and/or practice of failing to abide by the state laws, regulations, and procedures governing the investigation and removal of derelict vessels located in state waters. *Hoefling*, 811 F.3d at 1280. In support, the plaintiff’s complaint alleged a “systematic roundup and destruction of ugly boats in [the City’s] waters” as part of a “Cleanup” operation. *Id.* The plaintiff alleged that the “Cleanup” program was inconsistent with “established law and procedures intended to safeguard against the unlawful destruction of private property[.]” *Id.* *Hoefling* thus held that the plaintiff sufficiently pled municipal liability under a § 1983 claim for procedural due process and Fourth Amendment violations.

In reliance on *Hoefling*, the Court concluded the Complaint adequately stated a claim for relief. As the Court explained,

Plaintiffs here allege four instances on two separate occasions during which the City seized and destroyed their personal property without providing adequate notice or an opportunity for the owners to recover their property . . . . [t]he specific sweeps alleged are separated in time by several months . . . and occurred at different geographical locations.

ECF No. [23] at 10. In the City’s Motion, the City does not genuinely dispute that Plaintiffs have a property interest in their discarded property—at least not with argument supported by legal authorities. *See* ECF No. [82] at 2 n.2. In line with *Hoefling*, to the extent there are factual disputes concerning the four instances alleged in the Complaint, and the existence of a custom relating to those instances, summary judgment is not warranted in this case. For that reason, the Court turns to the record to determine whether there are genuine and material factual disputes.

***b. The City’s Custom***

As the following demonstrates, the record evidence indeed raises a factual dispute as to whether the City has a practice for handling Homeless Property, particularly a practice of discarding property that Homeless Persons do not voluntarily part with, either by unreasonably categorizing the property either as contaminated or abandoned, or by failing to take steps to ensure that Homeless Property that the City stores can be returned to Homeless Persons. In Plaintiffs’ framing, the record shows that the City “unreasonably disposes of property it deems to be ‘contaminated’ or abandoned.” ECF No. [106] at 14.

As described in the material facts, the APM requires City personnel to place notices of Cleanup operations prior to the date on which the Cleanup operation will occur, with at least 72 hours of notice. Pls.’ SMF ¶¶ 9, 86; Def.’s CSMF ¶¶ 9, 86. According to the APM, the HEAT arrives at a homeless encampment that is designated for a Cleanup operation, requests that Homeless Persons there relocate their property, offers to voluntarily discard their unwanted property, and—for those individuals who elected to part with property—requires them to sign a Voluntary Disposal of Property Form prior to disposing the property. ECF No. [74-2] at 199. For any Homeless Property that the owner cannot move and that cannot be left on the site, City personnel must document, secure, and store the property for a period of ninety days, after which

unclaimed property will be disposed of. *Id.* City personnel must request that the Homeless Person sign an Inventory Storage Form. *Id.*

Where Homeless Property is unattended, the APM provides that City personnel must collect that property, including personal items, inventory the property on an Inventory Storage Form, and store the property for a ninety-day period, after which the City may discard the Homeless Property. *Id.* When the City stores unattended property, the APM requires that the City complete an Inventory Storage Form and hold the property for ninety days. ECF No. [74-1] at 199.

Turning specifically to the evidence of the City's Cleanup operations, the record shows the HEAT has posted yellow vinyl notices near homeless encampment sites, though the record is not clear as to when those notices were posted. *See* ECF No. [74-11] at 266-278. Moreover, the parties dispute the effectiveness of those notices. The Court's review indicates that, at least in some instances, multiple vinyl yellow notices were posted over each other, which indicates that Cleanup operations occur in some areas with such frequency that it may not be evident when the next Cleanup operation will occur. In any event, Cooper-Levy testified she did not see a notice of a Cleanup operation on the day she claims she lost her personal items—including an urn with her mother's ashes—in the vicinity of Sister Theresa in Overtown; however, she noticed notices of a Cleanup operation on the ground after she lost her property. Cooper-Levy Dep. at 81:8-22. Similarly, Simmons testified that he saw twenty (20) notices on the day his property disappeared but not in the week prior to his property's disappearance. Simmons Dep. at 46:23-47:11. Likewise, Sylverin testified that he did not see Cleanup notices the week of August 2, 2021. Pls.' SMF ¶ 79; Def.'s CSMF ¶ 79.

When the City stores Homeless Property, the evidence indicates that the City completes Inventory Storage Forms and there exist sixty-five (65) Storage Inventory Forms, and thirty-seven (37) handwritten notes with lists of property. Pls.’ 145; Def.’s ¶ 145. However, many of those Forms and notes are illegible, incomplete, and do not provide sufficient information to connect inventoried property to their owner. Pls.’ SMF ¶¶ 146-56; Def.’s CSMF ¶¶ 146-56.

The parties dispute whether the HEAT discards Homeless Property that the HEAT identifies as Contaminated or Dangerous items during Cleanup operations, but the record indicates that such items are discarded, at least in certain instances. Pls.’ SMF ¶ 105; Def.’s CSMF ¶ 105; Candales Dep. at 52:12-19. For example, River’s testimony indicates that the City has at least in one instance discarded property which belonged to Rivers, on the grounds the property was contaminated. Rivers Dep. at 41:4-10. However, Rivers testified his property did not stink, did not have mildew, he kept his property neat and clean, and he cleaned the area around his tent. *Id.* at 105:21-106:7. Similarly, the record does not support that the property belonging to any other Plaintiff was contaminated. *E.g.*, Simmons Dep. at 50:8-19 (testifying that his property was not contaminated or wet).

The parties also dispute the circumstances under which the City would identify Homeless Property as abandoned property. According to Candales, the City looks for “clear signs of abandonment” before considering Homeless Property abandoned. Candales Dep. at 52:9-25. However, Candales’s testimony indicates that the City considers abandoned any Homeless Property (1) that is unattended, (2) for which no homeless persons in its vicinity can identify the location of the owner, and (3) where the property has been observably unattended for three days. *Id.* at 52:9-25. Moreover, Rosemond’s testimony indicates that the City’s default is not to disturb ostensibly abandoned property. Rosemond Dep. at 218:25-219:2. However, when considering



the provisions of the APM, such unattended property cannot be undisturbed without impeding the cleaning of a homeless encampment during a Cleanup operation. That means either the City does not follow the APM in this respect or Rosemond's testimony is incorrect.

Moreover, Plaintiffs' testimony indicates that the City has discarded Homeless Property that its owners had not abandoned. For instance, a homeless man called Cooper-Levy on May 2021 while she was at work to let her know the City was discarding homeless persons' property and advised her to "come and get [her] stuff" at the encampment because the City was "throwing [out] people['s] property[.]" Cooper-Levy Dep. at 54:21-55:12. That testimony supports that Cooper-Levy had not intended to abandon her property, and her property did not exhibit "clear signs" of abandonment. Likewise, although the parties dispute whether Rivers' property was located at the Cleanup location, Rivers testified he observed a crane picking up and throwing his tent, with the property that was contained therein, into a garbage truck during his lunch break from work on August 2, 2021. Rivers Dep. at 40:1-41:3, 48:12-21. Moreover, Simmons testified he observed City personnel throwing away his property in 2021 in the vicinity of "11th Street", though his testimony appears to be inconsistent on this point and indicates that he heard from a third party that MPD officers threw away his property. *See* Simmons Dep. 18:22-25, 42:3-7, 42:19-23. The HEAT discarded his property even though he kept all his property "together", indicating that it was not abandoned. *Id.* at 45:21-25. Moreover, Sylverin testified that his property was discarded *while he was present* at a Cleanup on August 2, 2021 while living somewhere "between 11th and 10th", and that he kept the area around his property clean. *See* Sylverin Dep. at 24:22-25, 63:22-25, 63:1-3, 80:11-25, 81:1-6, 97:12-18; Pls.' SMF ¶ 121; Def.'s CSMF ¶ 121.

Further, the parties dispute whether the City provides notice to Homeless Persons when it stores or discards Homeless Property. Pls.’ SMF ¶ 126; Def.’s CSMF ¶ 126.

In the light most favorable to Plaintiffs, those facts support that the City has a practice of discarding Homeless Property that is not contaminated, dangerous to public health and safety, or abandoned. Those facts also support that the City stores Homeless Property that eventually becomes discarded because the City’s Inventory Storage Forms fail to provide sufficient information to allow the City or Homeless Persons to retrieve stored property. The objective of that practice is to “try to get people off the street.” Rosemond Dep. at 80:2-25.

The above-described practice is inconsistent with or extrinsic to the APM in that the practice entails discarding items that are not contaminated, dangerous to public health or safety, or abandoned; and inadequately notifying Homeless Persons of the City’s storage of Homeless Property and inventorying that property for the purposes of retrieval. As the Court pointed out in its Order on the City’s Motion to Dismiss, this practice is sufficiently pervasive and widespread as the City discarded Homeless Property not abandoned or contaminated during different periods and occurring at different geographical locations. ECF No. [23] at 10. Although those circumstances may indicate the incidents are isolated, those circumstances also point to a widespread practice under the summary judgment standard. The Court’s conclusion is bolstered by the fact that none of the City’s personnel have been warned or disciplined for violating the APM, even though the incidents involving Plaintiffs support that Cleanup operations have been conducted at variance with the APM’s provisions, suggesting that the practice is entrenched and tolerated. Pls.’ SMF ¶ 130; Def.’s CSMF ¶ 130.

*c. Plaintiffs’ Injuries*

The facts further support that the City discarded Plaintiffs’ property pursuant to the City’s property discarding practice causing injury. The record does not indicate that Plaintiffs’ property

was stolen by others or lost on their own account. Rather, as described above, each Plaintiff has testified that the City disposed of his or her property. Moreover, each Plaintiff has testified that he or she no longer has possession of certain property. Cooper-Levy lost her tent, various forms of identification, clothes, and an urn with her mother's ashes. Cooper-Levy Dep. at 65:25-70:20. Simmons lost a tent, clothes, furniture, personal items, including jewelry and a coin stamp collection. ECF No. [74-13] at 74. Rivers lost his tent and a \$60.00 coin collection. Rivers Dep. at 40:1-41:3, 48:12-21; Pls.' SMF ¶ 71; Def.'s CSMF ¶ 71. Finally, the evidence supports that Sylverin lost furniture and his pet cats. Pls.' SMF ¶¶ 83, 121; Def.'s CSMF ¶¶ 83, 121.

The foregoing disputes are relevant to the proof of each element of a Section 1983 claim. Thus, summary judgment is not warranted unless Plaintiffs are required to make a showing that the City acted with deliberate indifference. The Court next turns to that issue.

### **iii. Deliberate Indifference**

As another threshold matter, the Court disagrees with Plaintiffs that the deliberate indifference standard is only applicable to negligent hiring or failure to train employees claims. The Supreme Court has spoken on this issue: "a plaintiff seeking to establish municipal liability on the theory that a facially *lawful* municipal action has led an employee to violate a plaintiff's rights must demonstrate that the municipal action was taken with 'deliberate indifference' as to its known or obvious consequences." *Brown*, 520 U.S. at 407 (emphasis added). Where a plaintiff alleges that the deprivation of his or her federal right is attributable to a facially lawful municipal action, that plaintiff must meet the stringent "deliberate indifference" standard. Otherwise, a section 1983 action would impermissibly subject a municipal government to liability on showing of mere negligence. For that reason, Plaintiffs' reliance on *Brown* and *Connick v. Thompson*, 563 U.S. 51 (2011) is misplaced. Those cases, although concerning the

hiring and training of municipal employees, respectively, are not by their own terms limited to those situations.

However, the Court also disagrees with the City that a showing of deliberate indifference is required in every circumstance. Where the municipal action *itself* violates federal law, questions of fault and causation are straightforward. *Brown*, 520 U.S. at 404. As *Brown* states, “the conclusion that *the action taken or directed by the municipality* or its authorized decisionmaker itself violates federal law will also determine that the municipal action was the moving force behind the injury of which the plaintiff complains.” *Id.* at 405 (emphasis added). Because the action taken by the municipality here is the practice of taking and destroying property that is not abandoned, contaminated, or dangerous, without notice or an opportunity to be heard, the City has not met its burden on summary judgment.

Accordingly, the City’s Motion is due to be denied.

#### **B. Plaintiffs’ Motion**

In their Motion, Plaintiffs raise three interrelated arguments to support partial summary judgment. First, Plaintiffs contend that the City violated Plaintiffs’ constitutional rights through the APM and through the City personnel’s implementation of the policy in practice during Cleanup operations. ECF No. [79] at 4. Specifically, Plaintiffs maintain there is no genuine dispute as to whether the City deprived Plaintiffs of their property during a Cleanup operation, or that the City was following a custom or practice in depriving Plaintiffs of their property rights. *Id.* at 6. Second, Plaintiffs argue that the deprivation of their property was a violation of the Fourth Amendment. *Id.* at 9-10. Third, Plaintiffs contend that the deprivation was also violative of procedural due process. *Id.* at 10-23. On those grounds, Plaintiffs assert they are entitled to declaratory and injunctive relief. *Id.* at 23-26.

**i. The Existence of a Municipal Policy or Custom, and Causation**

As another preliminary matter, the Court notes that Plaintiffs argue in their Response to the City’s Motion that “there are additional facts which are in dispute which could allow a reasonable juror to determine that the City’s unconstitutional custom and practice caused Plaintiffs to lose their property.” ECF No. [106] at 13. In particular, Plaintiffs contend there is a dispute as to whether the City has a widespread custom of failing to store property. *Id.* at 13. Plaintiffs also contend it is disputed whether the City provides reasonable notice of when it intends to conduct a Cleanup operation and when it disposes of property. *Id.* Plaintiffs also state that “[i]t remains disputed whether the City unreasonably disposes of property it deems to be ‘contaminated’ or abandoned.” *Id.* at 14.

Plaintiffs argue at cross purposes in their Motion and their Response. Recognizing that tension, Plaintiffs submit that “[t]he Court does not need to resolve [the disputes identified in their Response] if the Court agrees with the arguments put forth in” Plaintiffs’ Motion. *Id.* However, those factual disputes are central to a determination of whether Plaintiffs can meet their burden to demonstrate the City’s liability. As Plaintiffs recognize, a plaintiff must establish that he or she suffered a constitutional violation caused by an official municipal policy or custom. *See Monell*, 436 U.S. at 690; *see also McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004) (“It is only when the ‘execution of the government’s policy or custom . . . inflicts the injury’ that the municipality may be held liable.” (citing *City of Canton v. Harris*, 489 U.S. 378, 385, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989))).

Accordingly, for Plaintiffs to be entitled to summary judgment on the City’s liability, the undisputed factual record must demonstrate that Plaintiffs suffered a constitutional violation that is attributable to a municipal policy or custom. However, as the Court set forth in reciting the

material facts in this case and in its discussion regarding the City's Motion, the record demonstrates the presence of genuine and material factual disputes.

First, there is a dispute as to whether Plaintiffs received adequate notice regarding the Cleanup operations. For example, the parties dispute whether the City notifies Homeless Persons of the property it stores or discards after Cleanup operations. Pls.' SMF ¶ 124; Def.'s CSMF ¶ 124. That dispute is material because it applies to whether Plaintiffs were deprived of procedural due process. Although the record indicates that, in at least one instance, the City provided notice that it stored a Homeless Person's shopping cart, that scintilla of evidence does not establish that the City has a practice of doing so in every instance. *See* ECF No. [74-11] at 293. There is also a question about whether the notice the City provides to Homeless Persons is adequate. *See, e.g.,* Cooper-Levy Dep. at 81:8-22 (describing how notices of Cleanup operation were on the ground after the May 2021 Cleanup operation).

Second, there are factual disputes concerning whether the deprivation of Plaintiffs' property was pursuant to a municipal policy or custom. As to Simmons's property, there is a dispute as to whether his property was taken by City officials during Cleanup operations. Pls.' SMF ¶¶ 51-53; Def.'s CSMF ¶¶ 51-53. That dispute is material because the taking of his property during that Cleanup operation is necessary to establish that it was pursuant to an alleged City custom. If City officials took Simmons's property outside of a Cleanup operation, then Simmons cannot argue the City's taking was pursuant to one of the City's customs. Stated another way, the dispute as to whether Simmon's property was taken during a Cleanup operation substantiates a reasonable inference that the loss of his property may have been attributable to an isolated occurrence. Similarly, as to Rivers's property, there is a dispute as to whether that

property was taken during the August 2, 2021 Cleanup operation. Pls.' SMF ¶¶ 65-66; Def.'s CSMF ¶¶ 65-66.

Third, there are factual disputes concerning the existence of a municipal custom or policy. There is a dispute whether the City disposes of abandoned property and a dispute on whether the City discards contaminated property. Rosemond Dep. at 218:25-219:2. Pls.' SMF ¶ 105; Def.'s CSMF ¶ 105. It is also disputed whether the City disposes of Homeless Property once stored. *See* McLean Dep. at 116:3-9 (testifying that there is a limit to the amount of Homeless Persons' property that the City can store).

Importantly, there is evidence that calls into question whether the May 2021 and August 2, 2021 Cleanups were implemented pursuant to a municipal policy or custom. For example, Cooper-Levy and Rivers testified that they had never experienced a Cleanup like the ones at issue, indicating that those Cleanups were unusual or outside the norm for the City's Cleanup operations; i.e., the incidents that gave rise to this action are isolated occurrences. *See* Cooper-Levy Dep. at 63:22-64:17; Sylverin Dep. at 90:17-91:9; 93:4-25, 98:20-99:1.

The Court's review of the record does not support that Plaintiffs' property was abandoned or contaminated, and the City does not contend that property was abandoned or contaminated. Nevertheless, given the other factual disputes that exist, summary judgment is improper as to the City's Section 1983 liability.

## **ii. Declaratory and Injunctive Relief**

Because there are factual disputes concerning the City's Section 1983 liability, it is premature for the Court to consider Plaintiffs' arguments concerning equitable relief.

## **iii. Request for a Hearing**

Because the Court has been able to adjudicate Plaintiffs' Motion without the benefit of a hearing, Plaintiffs' request for a hearing is not necessary.

**IV. CONCLUSION**

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The City's Motion for Summary Judgment, **ECF No. [82]**, is **DENIED**.
2. Plaintiffs' Motion for Partial Summary Judgment, **ECF No. [79]**, is **DENIED**.

**DONE AND ORDERED** in Chambers at Miami, Florida, on December 11, 2023.

A handwritten signature in black ink, appearing to be 'JB' or similar, written over a horizontal line.

**BETH BLOOM**  
**UNITED STATES DISTRICT JUDGE**

Copies to:

Counsel of Record



## Sec. 1-13. - General penalty.

Any person violating the provisions of any section of this Code or any other ordinance, where no other penalty is prescribed, shall, upon conviction, be fined not more than \$500.00, or be imprisoned at hard labor on the streets or other works of the city for not more than 60 days, or shall be both fined and imprisoned. Each day that such violation shall continue (or, in the case of shows and exhibitions illegally conducted, each performance) shall constitute a separate offense.

(Code 1967, § 1-6; Code 1980, § 1-6)

**Charter reference**— Authority to impose penalties for ordinance violations, limitation on penalties, § 3(z).

**State Law reference**— Penalty for violation of ordinances, F.S. § 162.22; fines and forfeitures collected in county court for violations of municipal ordinances payable to municipality, F.S. § 34.191; punishment for misdemeanors, F.S. §§ 775.082, 775.083.

## Sec. 22-1. - Definitions.

For the purpose of this chapter, the definitions contained in this section shall apply unless otherwise specifically stated.

*Additional leased garbage container(s).* The words "additional leased garbage container(s)" shall mean one or more additional garbage container(s) leased by an assessed property owner pursuant to sections 22-2 and 22-12 of the City Code.

*Annual franchise fee.* The words "annual franchise fee" shall mean the yearly fee charged by the City of Miami ("city") to each franchisee who operates within the city limits and collects garbage and trash. See subsection 22-50(b) of the City Code.

*Annual specialized waste handling fee.* The words "annual specialized waste handling fee" shall mean the yearly fee charged by the city to each franchisee which operates within the city limits and collects trash, excluding garbage. See subsection 22-50(c) of the City Code.

*Biological waste.* The words "biological waste" shall mean solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biomedical waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals. The term does not include human remains that are disposed of by persons licensed under F.S. ch. 470.

*Biological waste collector.* The words "biological waste collector" shall mean any private solid waste contractor who collects, transports or disposes of biological waste.

*Biomedical waste.* The words "biomedical waste" shall mean any solid waste or liquid waste which may present a threat of infection to humans. The term includes, but is not limited to, nonliquid human tissue and body parts; laboratory and veterinary waste which contain human-disease-causing agents; discarded

disposable sharps; human blood, and human blood products and body fluids; and other materials which in the opinion of the department of health and rehabilitative services of the state represent a significant risk of infection to persons outside the generating facility.

*Biomedical waste collector.* The words "biomedical waste collector" shall mean any private solid waste contractor who collects, transports or disposes of biomedical waste.

*Bulky waste.* The words "bulky waste" shall mean, but not be limited to, large items of household refuse such as appliances, furniture, accumulations from major tree cutbacks (exceeding ten inches in diameter and four feet in length and weighing more than 50 pounds), large crates and like articles which shall be placed out for city collection by residential unit owners paying for city service on a weekly basis.

*Certified recovered materials dealer.* The words "certified recovered materials dealer" shall mean a dealer certified under F.S. § 403.7046, who handles, purchases, receives, recovers, sells or is an end user of recovered materials as defined herein.

*Collection area.* The words "collection area" shall mean the entire boundary of the city at all times.

*Commercial business.* The words "commercial business" shall mean and include all retail, professional, wholesale, and industrial facilities and any other commercial enterprises, for profit or not for profit, offering goods or services to the public.

*Commercial hauler.* The words "commercial hauler" shall mean a licensed city franchisee that operates within the city limits and provides certain services to multi-family and commercial businesses including but not limited to garbage, trash, recycling, roll-off, and specialized waste handling service.

*Commercial landscaper.* The words "commercial landscaper" shall mean an individual or organization registered with the city (see section 22-10 of the City Code) to provide grounds and landscaping services to residences and/or commercial properties within the city for grounds up-keep and maintenance.

*Commercial property.* The words "commercial property" shall mean any hotel, motel, roominghouse, tourist court, trailer park, bungalow court, apartment building with rental apartments, cooperative apartments, and/or multiple-story condominium buildings and any other business or establishment of any nature or kind whatsoever other than a residential unit as defined in this section.

*Commercial solid waste.* The words "commercial solid waste" shall mean every waste accumulation, including but not limited to, dust, paper, paper cartons, cardboard cartons, excelsior, rags, garbage, plastics, metal containers, recyclable material, garden and yard clippings and cuttings, bulky waste and other waste which is usually attendant to the operations of commercial businesses or multifamily residences.

*Commercial solid waste and recycling advisory committee.* The words "commercial solid waste and recycling advisory committee" shall be defined as an elected/appointed/selected body created for the purpose of providing advice and recommendations on commercial solid waste issues within the city in

conjunction and cooperation with the department of solid waste.

*Commercial solid waste service.* The words "commercial solid waste service" shall mean the collection and disposal of garbage, trash, recycling, solid and processable waste for all business, commercial, industrial, religious, health, educational, governmental and quasi-governmental establishments, including the collection and disposal of construction and demolition debris.

*Condominiums.* The words "condominiums" or "condominium buildings" shall be deemed to mean any building or structure that evidences that form of ownership of real property which is created pursuant to the State of Florida Condominium Act, which is comprised of units that may be owned by one or more persons, and in which there is appurtenant to each unit an undivided share in common elements, except for properties excluded by City Resolution No. 11807, adopted on June 22, 1999. Any condominiums with three or more dwelling units therein shall be classified as commercial establishments for purposes of this chapter.

*Construction and demolition debris.* The words "construction and demolition debris" shall mean materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project, and including rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste, including material from a construction or demolition site which is not from the actual construction or destruction of a structure, will cause it to be classified as other than construction and demolition debris. The term also includes:

- (1) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;
- (2) Except as provided in F.S. § 403.707(12)(j), unpainted, non-treated wood scraps from facilities manufacturing materials used for construction of structures or their components and unpainted; non-treated wood pallets provided the wood scraps and pallets are separated from other solid waste where generated and the generator of such wood scraps or pallets implements reasonable practices of the generating industry to minimize the commingling of wood scraps or pallets with other solid waste; and
- (3) De minimis amounts of other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.

*Construction and demolition debris collector.* The words "construction and demolition debris collector" shall mean any commercial solid waste franchisee who collects, transports or disposes of construction and demolition debris and shall be subject to a registration fee as provided for F.S. § 403.7046.

*Construction dumpster or roll-off.* The words "construction dumpster or roll-off" shall mean an approved open metal container without wheels, with capacity up to 40 cubic yards, used at construction sites for the purpose of removing construction and demolition debris, which includes rock, metal and other materials which are heavy in weight or substantial in size, used in connection with a construction and/or demolition project.

*Container-on-wheels.* The words "container-on-wheels" shall refer to the 96-gallon containers issued to residences by the city for automated garbage collection and are required to be used, once issued.

*Containerized waste.* The words "containerized waste" shall mean and include refuse, not to include garbage as defined herein, which is placed in containers, plastic bags, and/or bulk containers not exceeding three feet in length or weighing more than 50 pounds.

*Curbside.* The word "curbside" shall mean the area between the sidewalk and the street edge or, in areas without sidewalks, the area between the edge of the traveled portion of any public or private street and the property line.

*Department.* The word "department" shall mean the city department of solid waste.

*Director.* The word "director" shall mean the director of the department of solid waste.

*Dumping.* The word "dumping" shall mean to throw, discard, place, deposit or bury any litter and/or refuse except where permitted.

*Dumpster.* The word "dumpster" shall mean an approved metal container on wheels with a tightfitting solid top and a minimum capacity of one cubic yard or 202 gallons.

*Enforcement officer.* The words "enforcement officer" shall mean designated agents of the city manager, acting by and through him/her, including but not limited to, sanitation inspectors, code enforcement inspectors, police officers, NET Administrators and NET inspectors.

*Fiscal year.* The words "fiscal year" shall mean the 12-month period beginning October 1.

*Franchisee.* The word "franchisee" shall mean a private commercial solid waste/firm that is granted a nonexclusive franchise by the city, to remove and dispose of solid waste from commercial properties, which is required to pay a percentage of its gross monthly earnings to the city pursuant to the provisions of this chapter.

*Franchise agreement.* The words "franchise agreement" shall mean a non-exclusive agreement between the city and a qualified firm to provide commercial solid waste services, as defined in this chapter, within the city.

*Franchise fees.* The words "franchise fees" shall mean the monthly percentage of gross receipts remitted to the city by each franchisee. See section 22-56 and section 22-50 of the City Code, as amended.

*Garbage.* The word "garbage" shall mean every refuse accumulation of animal, fruit or vegetable matter that attends the preparation, use, cooking and dealing in, or storage of edibles, and any other matter, of any nature whatsoever, which is subject to decay, putrefaction and the generation of noxious or offensive gases or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ-carrying insects.

*Garbage container.* The words "garbage container" shall mean a galvanized metal, durable plastic or other suitable material container of the type commonly sold as a garbage container, including wheeled containers, of a capacity not less than 20 gallons and not to exceed 96 gallons, sufficiently strong to be emptied conveniently, or a bail by which it may be lifted, and a tightfitting metal or plastic top with handle, and so constructed as to permit the free discharge of its contents. The container must not have any inside structures such as inside bands and reinforcing angles or anything within the container to prevent the free discharge of the contents. The container shall be free of jagged or sharp edges.

*Gross receipts.* The words "gross receipts" shall mean all monies, whether paid by cash, check, debit, credit, or any other legal form of payment, resulting from all transactions and activities in the franchisee's regular course of business and trade including administrative fees, garbage, industrial, solid waste, used cooking oil waste, environmental charges and fees, containerized waste services, fuel surcharge, construction and demolition debris, roofing materials, trash, litter, maintenance, compactors, refuse and/or rubbish collection removal and disposal services rendered, hand bag collection, recycling (excluding recovered materials at commercial establishments as defined by F.S. § 403.703), or from any other source related directly or indirectly from waste collection services, including, but not limited to, all income derived from the use of dump trucks, grappling trucks, roll-off trucks, trailers, roll-offs, boxed in, framed, fenced in, or otherwise designated storage areas, etc., containers, bagsters, chutes, and any other vehicles and equipment used for collection and disposal of any debris by the franchisee, exclusive of Franchise Fees herein and taxes as provided by law, whether wholly or partially collected within the city, less bad debts. Gross receipts shall not include income derived from the transportation, storage, treatment, collection, and removal of biomedical, biological, or hazardous waste as herein defined.

*Hazardous waste.* The words "hazardous waste" shall mean solid waste, or a combination of solid wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated or otherwise managed.

*Hazardous waste collector.* The words "hazardous waste collector" shall mean any private solid waste contractor who collects, transports or disposes of hazardous waste and shall be subject to a registration fee as provided for in F.S. § 403.7046.

*Health and safety concern.* The words "health and safety concern", for purposes of this chapter, shall mean any inefficient and improper method of managing solid waste collection which creates a hazard to the public health, causes pollution of air and water resources, constitutes a waste of natural resources, has an adverse effect on land values and creates public nuisances.

*Industrial wastes.* The words "industrial wastes" shall mean the waste products of canneries, slaughterhouses or packing plants; condemned food products; wastes and debris from brick, concrete block, roofing shingle or tile plants; debris and wastes accumulated from land clearing, excavating, building, rebuilding and altering of buildings, structures, roads, streets, sidewalks, or parkways; and any waste materials which, because of their volume or nature, do not lend themselves to collection and incineration commingled with ordinary garbage and trash, or which, because of their nature or surrounding circumstances, should be, for reasons of safety or health disposed of more often than the city collection service schedule provided for in this chapter.

*Industrial waste collector.* The words "industrial waste collector" shall mean any private solid waste contractor who collects, transports or disposes of industrial waste and shall be subject to a registration fee as provided for in F.S. § 403.7046.

*In-kind services.* The words "in-kind services" shall mean those services for which no fees or charges are assessed, including service to city facilities and neighborhood cleanups as defined by the director.

*Landscape firm.* The words "landscape firm" shall mean landscape architects, landscape contractors, landscape maintenance firms and all others doing work similar to that performed by landscape architects, landscape contractors and landscape maintenance firms doing business within the city.

*Large residential trash.* The words "large residential trash" shall mean yard and garden trash weighing more than 50 pounds, bulky and noncombustible materials which cannot be containerized and weigh over 50 pounds, and other non-hazardous, non-construction, non-demolition, non-biomedical or non-industrial material too large to be bagged, bundled or containerized and weighing over 50 pounds. Large trash shall be placed out along with bulky waste for once per week collection.

*Litter.* The word "litter" shall mean any garbage, rubbish, can, bottle, box, container, tobacco product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, trash, refuse and paper.

*Local government registration fee.* The words "local government registration fee" shall mean the annual, October 1st through September 30th, charge assessed by the city to recovered materials dealers and other businesses deemed as being required to register with the City as a service provider in the designated category, commensurate with and no greater than the cost incurred to establish and operate a registration and reporting process limited to the regulations, reporting format and reporting frequency pursuant to F.S. § 403.7046, with regard to recovered materials, and other businesses of a designated category, their collection and disposal of same from commercial properties within the city.

*Minidump.* The word "minidump" shall mean a disposal site, maintained by the department, where householders of the city may deposit trash and small trash.

*Modified recycling program.* The words "modified recycling program" shall mean an operation approved by the department which provides for the recycling of recyclable material by a method varying from the requirements of section 22-19 or section 22-20 of the City Code.

*Mow.* The word "mow" shall mean to cut down grass or similar growth with a mechanical device such as lawn mower.

*Multifamily residence.* The words "multifamily residence" shall mean and include any building or structure containing four or more contiguous living units and intended exclusively for residential purposes.

*NET.* The word "NET" shall mean the Neighborhood Enhancement Team.

*Neighborhood cleanups.* The words "neighborhood cleanups" shall mean periodic intensive removal of litter, debris and other solid waste material from a designated area of the city, initiated or approved by the city, its NET offices and/or recognized community based organizations or associations including special event activities citywide.

*Noncombustible refuse.* The words "noncombustible refuse" shall mean refuse materials that are unburnable at ordinary incinerator temperatures (800 degrees to 1,800 degrees Fahrenheit) such as metals, mineral matter, large quantities of glass or crockery, metal furniture, auto bodies or parts, and other similar material or refuse not usual to housekeeping or to the operation of stores or offices.

*Nonexclusive franchise.* The words "nonexclusive franchise" shall mean a non-exclusive right and privilege granted to a qualified firm to contract to provide solid waste, construction and demolition material, and recyclable collection and disposal services to commercial and non-residential properties, as defined in this chapter, in, upon, over and across the present and future streets, alleys, easements and other public places of the city.

*Organic waste.* The words "organic waste" shall mean a type of waste material which can be broken down into its base compounds by micro-organisms and other living things, regardless of what those compounds may be, and can be commonly found in municipal solid waste such as green waste, food waste, paper waste, and biodegradable plastics. The words "organic waste" specifically do not include waste as defined by the recoverable materials definition and the associated exemption under F.S. § 403.7046.

*Permit per account fee.* The words "permit per account fee" shall mean the charge assessed by the city to a franchisee, for every account with whom it acquires or maintains an agreement during the fiscal year for purposes of providing commercial solid waste services.

*Plastic bag.* The words "plastic bag" shall mean a polyethylene or other heavy-duty plastic bag meeting the National Sanitation Foundation standard of one and one-half mils and not exceeding a 32-gallon capacity with a securing twist tie.

*Portable container.* The words "portable container" shall mean dumpster, roll-away or other similar container designed for mechanized collection.

*Posting.* The word "posting" shall mean to display by putting up on property in a public place of view.

*Produce market.* The words "produce market" shall mean the area in which produce vendors congregate and sell their products bounded by NW 10th Avenue to the east, NW 22nd Avenue to the west, NW 23rd Street to the north, and NW 20th Street to the south.

*Public nuisance.* The words "public nuisance," for purposes of this chapter, shall mean a container or roll-off/container which appears to be utilized for commercial solid waste collection with or without a city franchise agreement and poses a threat to the health and safety of the community.

*Recovered materials.* The words "recovered materials" shall mean metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered materials as described above are not solid waste.

*Recyclable material.* The words "recyclable material" shall mean those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

*Recycling.* The word "recycling" shall mean any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

**State Law reference—** F.S. Ch. 403, Environmental Control Part IV—Resource Recovery and Management, as may be amended from time to time.

*Refuse.* The word "refuse" shall mean any garbage, garden trash, industrial waste, noncombustible refuse, rubbish, waste, bulk waste, containerized waste and/or solid waste.

*Residential unit.* The words "residential unit" shall mean any structure used or constructed or modified or adopted for use as a single-family dwelling, duplex, cluster housing, townhouse or multiple-family apartment building or other similar structure containing three or fewer residential units, and which is located on a single lot, parcel or tract of land. Each dwelling unit of a duplex, cluster housing, townhouse, or multiple-family building or other similar structure shall be deemed a separate residence.



*Roll-off/container.* The words "roll-off/container" shall mean a metal container, compacted or open, with or without wheels, designed and used by nonexclusive commercial solid waste haulers and/or other companies for the collection and disposal of construction debris, demolition debris and/or large quantities of trash and/or bulky waste, but not garbage or commercial refuse.

*Roominghouses/boardingshouses.* The word "roominghouse" shall mean any legal nonconforming residential building used, or intended to be used, as a place where sleeping or housekeeping accommodations are furnished or provided for pay to transient or permanent guests or tenants which does not maintain a public dining room or cafe in the same building or in any building in connection therewith. The word "boardinghouse" shall mean an establishment where meals are regularly prepared and served for compensation for five or more persons, and where most of the food is placed upon the table family style without service or ordering of individual portions from a menu. Boardinghouses may also provide lodging for compensation. The proprietor of a roominghouse or boardinghouse may receive or reject whom he wishes and usually makes special oral or written contracts with each of his lodgers concerning compensation and length of stay.

*Rubbish.* The word "rubbish" shall mean refuse accumulation of paper, excelsior, rags or wooden or paper boxes or containers, sweepings and all other accumulations of a nature other than garbage, which are usual to housekeeping and to the operation of stores, offices and other business places, and also any bottles, cans or other containers which, due to their ability to retain water may serve as breeding places for mosquitoes or other water breeding insects; rubbish shall not include noncombustible refuse, as defined above.

*Safety inspection fee.* The words "safety inspection fee" shall mean a regulatory fee pursuant to F.S. § 166.221, imposed by the solid waste director upon a franchisee for inspection of substandard, unsafe, or inoperable vehicles and/or equipment.

*Screening.* The word "screening" shall mean a landscaped area with shrubs three feet in height at time of planting to form a continuous, unbroken solid buffer, or a five-foot-high fence or C.B.S. wall finished and painted on both sides to provide a visual barrier.

*Service unit.* The words "service unit" shall mean four sleeping rooms or a fraction thereof, where no cooking privileges are provided, located in any commercial establishment.

*Small trash.* The words "small trash" shall mean bundled and clean yard and garden trash, including shrubbery, vines, and branches capable of being gathered into bundles and tied securely so that each bundle does not exceed three feet in length or weigh more than 50 pounds; all accumulations of lawn, grass or shrubbery cuttings or clippings and leaf rakings, free of dirt, rock, large branches and bulky or noncombustible materials which can be containerized and not weigh over 50 pounds, per container; and accumulations of tree branches, tree limbs, parts of trees, bushes and shrubbery which are up to three inches in diameter and do not exceed four feet in length, do not weigh over 50 pounds, are too large to be

containerized, but require and can be bundled and tied, and other non-hazardous, non-construction, non-demolition, non-biomedical material small enough to be bagged, bundled, or containerized or does not exceed three feet in length or weigh more than 50 pounds. Small trash shall be placed out along with garbage for twice per week collection.

*Solid waste.* The words "solid waste" shall mean garbage, rubbish, refuse, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations.

*Solid waste disposal and resource recovery facility.* The words "solid waste disposal and resource recovery facility" shall mean any solid waste disposal area, volume reduction plant, transfer station or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, transfer or storage of solid waste.

*Source separated.* The words "source separated" shall mean the recovered materials are separated from solid waste where the recovered materials and solid waste are generated. The term does not require that various types of recovered materials be separated from each other and recognizes de minimis solid waste, in accordance with industry standards and practices, may be included in the recovered materials. Materials are not considered source separated when two or more types of recovered materials are deposited in combination with each other in a commercial collection container located where the materials are generated and such materials contain more than ten percent solid waste by volume or weight. For purposes of this subsection, the term "various types of recovered materials" means metals, paper, glass, plastic, textiles, and rubber.

*Special events.* The words "special events" shall mean events as delineated in subsection 22-171(a)(7) of the City Code and any other designated event designated as a special event by the city commission, city manager and/or designee.

*Special non-residential trash collection.* The words "special non-residential trash collection" shall mean yard and garden trash weighing more than 50 pounds, too large to be containerized for commercial collection, clean and free of dirt, rocks, trash and any other debris. It includes accumulations from major tree cutbacks (exceeding ten inches in diameter and four feet in length and weighing more than 50 pounds). Collection by the city must be approved and scheduled by department prior to set out or fines will be incurred.

*Special residential collection.* The words "special residential collection" shall mean a collection of non-hazardous, non-industrial, waste beyond the normal city garbage, trash, and recycling, including bulky waste and large trash, for which residents or property owners will be charged the cost of collection, disposal and the appropriate administrative fees. Such collection excludes asbestos, whole or used tires, oil, lead-acid batteries, mercury lights, combustible, hazardous, biomedical and biological waste.

*Specialized waste handler.* The words "specialized waste handler" shall mean those companies whose primary business is limited to collecting and disposing of solid waste that requires special handling and management, including, but not limited to white goods, waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue and biomedical and biological waste.

*Specialized waste.* The words "specialized waste" shall mean solid waste that requires special handling and management, including, but not limited to white goods, waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue, biomedical and biological waste.

*Specialized waste handling nonexclusive fee.* The words "specialized waste handling nonexclusive fee" shall mean the annual fee paid to the city for the right to conduct specialized waste handling services in the city.

*Swale area.* The words "swale area" shall mean the paved or unpaved area between the edge of the sidewalk or property line and the edge of the street.

*Temporary roll-off/container permit fee.* The words "temporary roll-off/container permit fee" shall mean the charge paid every 90 days the account remains active, per account to the city for each large container and/or roll-off utilized by franchisees to provide contracted removal and disposal of waste from commercial constructions and demolition, renovation and other similar accounts which are of a temporary nature.

*Trash.* The word "trash" shall mean garden, tree and shrubbery trash that is too large to be bagged, bundled or containerized, wooden or paper boxes or containers, and other accumulations of a nature other than garbage and bulky waste as defined herein which cannot be bagged, bundled or containerized for weekly collection.

*Waste-to-energy facility.* The words "waste-to-energy facility" shall mean a facility which uses conversion technology such as thermal, biological or biochemical processes to breakdown raw feedstock to produce a beneficial by-product and/or digestate. In general, the primary objective of the conversion technologies is to convert waste into useful energy products that can include synthetic or synthesis gas (syngas), biogas, petroleum, commodity chemicals, or compost in order to support waste diversion from landfills and to reduce carbon emissions.

(Ord. No. 10128, § 1, 7-10-86; Ord. No. 10232, § 1, 3-13-87; Ord. No. 10371, § 1, 1-14-88; Ord. No. 10887, § 1, 6-20-91; Ord. No. 11184, § 2, 10-27-94; Code 1980, § 22-1; Ord. No. 11352, § 2, 4-25-96; Ord. No. 11444, § 1, 2-20-97; Ord. No. 11703, § 1, 9-28-98; Ord. No. 11837, § 2, 9-28-99; Ord. No. 12258, § 2, 7-25-02; Ord. No. 12599, § 2, 10-14-04; Ord. No. 13194, § 2, 9-27-10; Ord. No. 13316, § 2, 3-8-12; Ord. No. 13531, § 2, 7-9-15; Ord. No. 13693, § 2, 7-13-17)

Sec. 22-6. - Littering and dumping prohibited; dumping or burying waste without proper authorization; illegal dumping in area bulky waste transfer stations; engaging in business of solid waste collection without franchise; declared public nuisance; presumption.

- (a) Intent. It is the intent of the city commission to prevent, in whatever way possible, the abuse of the environment of the city through acts of any persons that are generally classified under the headings of "dumping" and "littering," which acts severely burden the taxpayers of the city and adversely affect the attractiveness, public health, safety and welfare of the community for its residents and visitors.
- (b) The city will provide sufficient litter containers to be placed in strategic locations throughout the city, with special consideration to be given to high density populations and heavily traveled areas, to be used for the deposit of litter by pedestrians only and not by abutting store owners or vendors.
- (c) Prohibited act(s). The following shall be unlawful:
  - (1) Dumping litter and/or refuse in any manner or amount whatsoever in or on any public highway, road, street, alley, thoroughfare or any other public lands, except in containers or areas lawfully provided therefor. The provisions of F.S. § 403.413, as amended, shall apply to all public rights-of-way within the city.
  - (2) Dumping litter and/or refuse in or on any freshwater lakes, canals, rivers or streams or tidal or coastal waters of the city.
  - (3) Dumping litter and/or refuse and burying waste in any manner or amount whatsoever on any private property, unless prior written consent of the owner has been given, and such disposal has been authorized via permit by the county health department, provided said litter and/or refuse will not cause a public nuisance or be in violation of any other state or local laws or regulations.
  - (4) Sweeping, blowing by mechanical means or dumping litter and/or refuse including stagnant water or dead animals into, upon or along the drain, gutter, alley, lane, sidewalk, street or vacant lot, or in any public or private premises within the municipal limits of the city.
  - (5) Causing, maintaining, permitting or allowing the accumulation of any litter or refuse on any construction or building site before, during or after completion of said construction or building. It shall be the duty of the owner, or the owner's agent, of the property in question to make adequate provisions for the disposing of debris and litter and to have on the construction or building site adequate facilities for the disposing of said litter and refuse and to make appropriate arrangements for the collection thereof. Said arrangements and/or methods for disposing litter and debris shall be approved by the director prior to the issuance of a building permit.
  - (6) Disposing of the carcass of any dead animal, domestic or otherwise, by the throwing,

discarding, placing or depositing of said carcass in or on any of the locations noted in subsections (c)(1) through (3) of this section.

- (7) Discarding of garbage, fruit, or other matter subject to putrefaction, rotting or decay at minidumps shall constitute a violation of this chapter. Minidumps are restricted to use by residents of the city for the deposit of bulky waste from residential properties. The method of transporting this waste shall be as prescribed in section 22-7 herein.
- (8) Obstructing use of public facility, salvaging or vandalism by any person on the premises at which minidumps are located constitutes a violation of this chapter.
- (d) It shall be unlawful for any owner, occupant, lessee, employee, franchisee or other person from any commercial property to dump or cause to be dumped any material whatsoever from such commercial property at or upon any minidumps, public rights-of-way, city property or any unauthorized disposal location.
- (e) It shall be unlawful for any person, franchisee, firm, corporation or other legal entity to collect, remove or transport any solid waste material for compensation from any location or premises within the city without first having been granted a nonexclusive franchise by the city.
- (f) It shall be unlawful for any person, firm, corporation or other legal entity to utilize the services of any commercial solid waste collector who does not have a valid city solid waste nonexclusive franchise.
- (g) Declared public nuisance. In addition to, and not in limitation upon any enforcement action for violation of this section, it is the intent of the city commission to declare the dumping of litter and/or refuse in the city, as hereinbefore described and prohibited, a public nuisance and to subject violators of this section to the provisions of this chapter calling for removal of such a public nuisance through notice, hearing and a lien enforcement procedure if the city so chooses to remedy the prohibited condition. Any action taken pursuant to this section in enforcing the provisions of this chapter shall be considered cumulative and in addition to penalties and other remedies provided elsewhere in this chapter.
- (h) Applicability of state and county laws. In addition to, and not in limitation of the provisions of this section, the provisions of F.S. § 403.413, also known as the "Florida Litter Law," and chapter 15 of the Code of Metropolitan Dade County, as amended from time to time, are hereby added to this Code of Ordinances and incorporated by reference herein. The city commission also respectfully suggests to any court finding persons guilty of violations of the "Florida Litter Law" that the provisions of F.S. ch. 948, "Probation," be utilized liberally in order to require such persons to expend appropriate amounts of time and effort gathering up litter and refuse at places within the city as may be designated by the court.
- (i) Noncompliance with any section shall be punishable in a manner as provided in sections 22-6 and 22-93. Noncompliance may result in the city's taking such action as it deems appropriate under the circumstances, and a lien shall be imposed against the property for recovery of all

costs involved.

- (j) A civil fine of \$500.00 per occurrence shall be imposed for littering and for illegal dumping by individuals and a fine of \$1,050.00 per occurrence for littering and for illegal dumping when being done using a private vehicle.
- (k) Pursuant to the provisions of § 403.413, Fla. Stat., the Florida Litter Law, the sanitation inspectors are designated as litter enforcement officers of the city, for the purposes of enforcing F.S. § 403.413, and section 22-6 herein. Such employees are designated and appointed as litter enforcement officers.

(Ord. No. 10128, § 1, 7-10-86; Code 1980, § 22-6; Ord. No. 11703, § 6, 9-28-98; Ord. No. 11837, § 2, 9-28-99; Ord. No. 12258, § 2, 7-25-02; Ord. No. 12835, § 2, 10-12-06; Ord. No. 13194, § 2, 9-27-10; Ord. No. 13693, § 2, 7-13-17)

Sec. 37-1. - Reserved.

**Editor's note—** Ord. No. 12884, § 1, adopted February 8, 2007, repealed § 37-1 in its entirety, which pertained to state misdemeanors adopted by reference, and derived from the Code of 1967, § 38-50, and the Code of 1980, § 37-1.

Sec. 37-3. - Sleeping on streets, sidewalks, etc.

It shall be unlawful for any person to sleep on any of the streets, sidewalks, public places or upon the private property of another without the consent of the owner thereof.

(Code 1967, § 38-49; Code 1980, § 37-63)

**State Law reference—** Trespass, F.S. § 810.08 et seq.

Sec. 37-4. - Living or sleeping in vehicles.

Other than the area at the Marine Stadium designated for use by self-contained camper trailers, it shall be unlawful for any person within the city to park any vehicle on public rights-of-way, public properties or private parking lots, for the purposes of:

- (1) Living;
- (2) Sleeping;
- (3) Cooking;
- (4) Bathing; or
- (5) Housekeeping.

(Code 1967, § 38-54.1; Code 1980, § 37-69)

**City Code cross reference—** Marine Stadium, § 53-51 et seq.**Sec. 37-6. - Aggressive or obstructive panhandling prohibited.**

- (a) *Definitions.* As used in this section, the following words and terms shall have the following meanings:

*Aggressively beg* means to beg with the intent to intimidate another person into giving money or goods.

*Beg* means to ask or solicit for money or goods as a charity, whether by word, bodily gestures, signs, or other means.

*Intimidate* means to engage in conduct which would make a reasonable person fearful or feel compelled to react. Among the circumstances which may be considered in determining whether the conduct is intended to intimidate another person into giving money or goods are:

- (1) Touching the person solicited;
- (2) Following the person solicited, or persisting in begging after the person solicited has declined the request;
- (3) Using profane or abusive language toward the person solicited; or
- (4) Using violent or threatening gestures toward the person solicited.

*Obstruct pedestrian or vehicular traffic* means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take unreasonable evasive action to avoid physical contact.

*Public place* means an area generally visible to public view and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets open to the general public, including those that serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

*Unreasonable evasive action* means causing a vehicle to depart from the lane of traffic in which it is traveling to change lanes, to straddle lanes, or to enter onto a swale to obtain passage; it also means causing a pedestrian to leave the sidewalk or to make contact with a wall or fence bordering the sidewalk.

- (b) *Prohibited acts.* It shall be unlawful for a person to intentionally:
- (1) Aggressively beg; or
  - (2) Obstruct pedestrian or vehicular traffic while begging.
- (c) *Permitted activities.* Acts authorized as an exercise of one's constitutional rights include picketing, legal protest, and acts authorized by a permit duly issued by a lawful authority which do not constitute obstruction of pedestrian or vehicular traffic.
- (d) *Penalties.* The first violation of this provision shall be punishable by a fine of not more than

\$100.00 and 30 days imprisonment; second and subsequent violations shall be punishable by a fine of not more than \$200.00 and 60 days imprisonment.

- (e) *Alternative programs.* Nothing herein shall limit the discretion of the police, court personnel, and judges from referring individuals suspected, charged, or convicted of a violation of this provision to treatment programs or facilities as an alternative to prosecution or imprisonment, provided that the individual freely consents. For homeless individuals, such alternative programs shall include, but not be limited to, the Miami-Dade County Homeless Assistance Project.

(Ord. No. 12006, § 2, 12-14-00)

#### Sec. 37-7. - Sex offenders and sexual predators.

- (a) Findings and intent.
- (1) This section is to be known as "Lauren's Law."
  - (2) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.
  - (3) It is the intent of this article to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by creating areas around locations where children regularly gather and can be stalked or observed in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence.
- (b) Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*Permanent residence* means a place where the person abides, lodges, or resides for 14 or more consecutive days.

*Temporary residence* means a place where the person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

- (c) Sexual offender and sexual predator residence prohibition, penalties, exceptions.
- (1) It is unlawful for any person who has been convicted of a violation of F.S. §§ 794.011,



800.04, 827.071, or 847.0145, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, to establish a permanent residence or temporary residence within 2,500 feet of any school, designated public school bus stop, day care center, park, or playground.

- (2) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to nearest outer property line of a school, designated public school bus stop, day care center, park, or playground.

(d) Penalties.

- (1) A person who violates this section and whose conviction under F.S. §§ 794.011, 800.04, 827.071, or 847.0145, was classified as a felony of the third degree, second degree, first degree, or higher, shall be punished by a fine not to exceed \$500.00 or by imprisonment for a term not to exceed 60 days, or by both such fine and imprisonment.

- (e) This section applies to any person convicted of a violation of F.S. §§ 794.011, 800.04, 827.071, or 847.0145, for offenses that occur on or after October 1, 2004.

*Exceptions.* A person residing within 2,500 feet of any school, designated public school bus stop, day care center, park, or playground does not commit a violation of this section if any of the following apply:

- (1) The person established the permanent residence prior to July 1, 2005.
- (2) The person was a minor when he/she committed the offense and was not convicted as an adult.
- (3) The person is a minor.
- (4) The school, designated public school bus stop or day care center within 2,500 feet of the persons permanent residence was opened after the person established the permanent residence.

(Ord. No. 12691, § 2, 6-9-05; Ord. No. 12713, § 2, 7-7-05)

Sec. 37-8. - Panhandling prohibited in certain areas.

- (a) *Purpose.* The purpose of this section is to regulate and punish acts of panhandling or solicitation that occur at locations specified herein. The purpose of this section is not to punish the status or condition of any person. Regulation is required because panhandling in certain areas threatens the economic vitality of those areas, impairing the city's long term goals of attracting citizens, businesses and tourist to these certain areas and, consequently, the city overall. The city has substantial interests in protecting the city's investment in certain areas, protecting tourism, encouraging expansion of the city's economic base, and protecting the city's economy. The regulations in this section further these substantial interests: This

section is not intended to proscribe any demand for payment for services rendered or goods delivered. Nor is this section intended to prohibit acts authorized as an exercise of a person's constitutional right to legally picket, protest or speak.

- (b) *Definitions.* For purposes of this section, Downtown business district means the area generally described as follows:

N. Bayshore Drive from NE 13th Street to NE 15th Street

Biscayne Boulevard from Biscayne Boulevard Way to NE 15th Street

SE/NE 3rd Avenue from Biscayne Boulevard Way to NE 1st Street

SE/NE 2nd Avenue from Biscayne Boulevard Way to NE 15th Street

NE 1st Court from NE 12th Street to NE 14th Street

SE/NE 1st Avenue from SE 3rd Street to NE 14th Street

South/North Miami Avenue from Broadway to NE/NW 1st Street

North Miami Avenue from NE/NW 7th Street to NE/NW 8th Street

North Miami Avenue from NE/NW 10th Street to NE/NW 14th Street

NW Miami Court from Flagler Street to NE 1st Street, East half only

NW 1st Avenue from NW 1st Street to NW 3rd Street

NW 2nd Avenue from Flagler Street to NW 1st Street

Brickell Avenue from SE 8th Street to the South side of the Miami River Bridge

SE/SW 10th Street from Brickell Avenue to SW 1st Avenue

SE/SW 9th Street from Brickell Plaza to SW 1st Avenue

Biscayne Boulevard Way from Biscayne Boulevard to SE 2nd Avenue

SE 3rd Street from Biscayne Boulevard to SE 2nd Avenue

SE/SW 2nd Street from Biscayne Boulevard to SE 1st Avenue

SE/SW 1st Street from Biscayne Boulevard to SW 1st Avenue

Flagler Street from Biscayne Boulevard to NW Miami Court

Flagler Street from NW Miami Court to NW 1st Avenue, South half only

Flagler Street from NW 1st Avenue to NW 2nd Avenue

NE 1st Street from Biscayne Boulevard to NW Miami Court

NE 1st Street from NW Miami Court to NW 1st Avenue, North half only

NE 1st Street from NW 1st Avenue to NW 2nd Avenue

NE 2nd Street from Biscayne Boulevard to NE 1st Avenue

NE 3rd Street from Biscayne Boulevard to NE 1st Avenue

NE 4th Street from Biscayne Boulevard to NE 2nd Avenue

NE 5th Street from Biscayne Boulevard to NE 1st Avenue

NE 6th Street from Biscayne Boulevard to NE 1st Avenue

NE 7th Street from Biscayne Boulevard to North Miami Avenue

NE 8th Street from Biscayne Boulevard to North Miami Avenue

NE 9th Street from Biscayne Boulevard to NE 1st Avenue

NE 10th Street from Biscayne Boulevard to North Miami Avenue

NE 11th Street from Biscayne Boulevard to North Miami Avenue

NE 12th Street from Biscayne Boulevard to NE 1st Avenue

NE 13th Street from the Macarthur Causeway to NE 1st Avenue

NE 14th Street from N Bayshore Drive to North Miami Avenue

NE 14th Terrace from N Bayshore Drive to Biscayne Boulevard

NE 15th Street from N Bayshore Drive to NE 2nd Avenue

All public streets indicated in this boundary shall include the entire width of the public right-of-way unless otherwise specified.

- (c) *Prohibitions.* Soliciting, begging or panhandling is prohibited within the downtown business district.
- (d) *Penalties.* The first violation of this provision shall be punishable by a fine of not more than \$100.00 and 30 days imprisonment; second and subsequent violations shall be punishable by a fine of not more than \$200.00 and 60 days imprisonment.
- (e) *Alternative programs.* Nothing herein shall limit the discretion of the police, court personnel, and judges from referring individuals suspected, charged, or convicted of a violation of this provision to treatment programs or facilities as an alternative to prosecution or

imprisonment, provided that the individual freely consents. For homeless individuals, such alternative programs shall include, but not be limited to, the Miami-Dade County Homeless Assistance Project.

(Ord. No. 12997, § 2, 5-22-08; Ord. No. 13232, § 2, 11-18-10)

Sec. 37-11. - Public urination or defecation prohibited; exceptions; penalties.

- (a) *Purpose.* Public urination and/or defecation is found to be a public nuisance and detrimental to the health, safety, and welfare of the city and its inhabitants. It is the intent of this section to protect and preserve the health, safety, and welfare of the citizens of the city by prohibiting urination and/or defecation by any person in any public place as defined herein.
- (b) *Definitions.* For purposes of this section, the following words shall be defined as provided herein:

*Defecate or defecation*, as used in this section, means to excrete waste from the body from a person's bowels.

*Persons with impairments* means a disability, unrelated to the ingestion of alcohol, illegal substances, or substances not prescribed to the particular person ingesting them, which renders a person unable to control his or her bodily functions of urination and/or defecation.

*Public place* means any street, highway, right-of-way, alley, parking lot, driveway, sidewalk, boulevard, park, beach, wharf, pier, bridge, or other place, whether public or private, which is open to the public. As used in this section, "public place" does not include a place designated for use as a urinal or a toilet such as, but not limited to, a restroom or portable toilet.

*Urinate or urination*, as used in this section, means to pass or discharge urine excreted by the kidneys from the body.

- (c) *Prohibited acts.* It is unlawful for any person:
  - (1) To urinate in any public place that has not been designated for use as a urinal or toilet.
  - (2) To defecate in any public place that has not been designated for use as a toilet.
  - (3) Exceptions. Subsections (c)(1) and (c)(2) shall not apply to children under five years old or to persons with impairments as defined in this section.
- (d) *Penalty.* Any person violating any of the provisions of this section shall be subject to the penalty as provided in section 1-13 of the City Code.

(Ord. No. 13495, § 2, 2-12-15)

Sec. 38-3. - Closing hours for parks and playgrounds—Generally.

- (a) Except as otherwise provided in this chapter, all municipally owned parks and playgrounds of

the city and all similar real property owned by the city, not directly engaged in the operation of facilities which require that the general public have access to such premises during the hours hereinafter recited, shall be closed to the general public from 10:00 p.m. until 7:00 a.m., daily, except when kept open for special events sponsored by, or operated by, the city. Any person found in, on or about such premises during the hours herein set forth, unless such person is actually engaged at such time in official business for the city, the county, the state or the United States, shall be deemed to have violated this section. The prohibition herein contained shall not extend to any public meeting, exercise or exhibition held upon any such municipal properties which shall extend beyond 10:00 p.m., unless the person attending such public meeting, exercise or exhibition shall have been allowed a reasonable time in which to leave the premises, and nothing contained in this section shall interfere with the closing hours of any city department or division thereof and the use of its own facilities in the public interest, but this section is designed to prevent persons entering or loitering upon municipally owned real estate referred to herein during the prohibited hours when such entering or loitering is not connected with official business.

- (b) The city manager may in his discretion change hours of closing in any park where he deems it necessary.

(Code 1967, § 39-11; Code 1980, § 38-3)

Sec. 38-17. - Throwing or depositing substances, etc., within stadiums, parks and adjacent grounds.

It shall be unlawful for any person to throw, drop or deposit any substance or tangible thing or matter within or upon any municipal stadium or park or grounds adjacent thereto and composing a part thereof so as to soil or damage any property or endanger, injure or harm any person within such area.

(Code 1967, § 39-16; Code 1980, § 37-64)

**State Law reference—** Florida litter law, F.S. § 403.413.

Sec. 38-53. - Fires.

No fires are permitted in the parks, except in the grills provided. Charcoal is the only fuel permitted for use in the grills, and use of any other fuel is prohibited. Special rules for fires at the Robert King High Park group camping facility are listed on the permit to use that facility.

(Code 1967, § 39-45; Code 1980, § 38-33)

Sec. 38-54. - Use of facilities generally.

- (a) It is intended that all facilities be on a first come, first served basis. It is also intended that no group or organization be permitted to monopolize any area or facilities to the exclusion of all

others. Whenever the situation warrants, use of a facility will be regulated by use of permits. Terms and forms of permits will be formulated and regulated by the director of the department of parks and recreation to obtain the results intended as expressed above. Those activities which require permits are listed in section 38-74.

- (b) In general, the facilities and equipment are to be used for the purposes for which they were designed: benches to sit on, picnic tables to eat on, tennis courts to play tennis on, etc.
- (c) Use of facilities and equipment for purposes other than for which they were designed is prohibited.

(Code 1967, § 39-46; Ord. No. 10125, § 1, 7-10-86; Code 1980, § 38-34)

#### Sec. 38-62. - Water fountains.

Fountains are provided to provide drinking water. Use of water fountains for bathing, washing or cleaning cooking utensils is prohibited.

(Code 1967, § 39-54; Code 1980, § 38-42)

#### Sec. 38-63. - Disposal of trash.

Trash is to be deposited in trash containers. Nothing herein, including penalties for violation, shall be construed to be in conflict with the provisions of F.S. § 403.413, as may be amended or revised from time to time, pertaining to the Florida Litter Law.

(Code 1967, § 39-55; Code 1980, § 38-43; Ord. No. 11815, § 2, 7-13-99)

#### Sec. 38-68. - Restrooms.

No person shall loiter in or around any restroom facility. Children over five years of age shall not go into restrooms designated for the opposite sex.

(Code 1967, § 39-60; Code 1980, § 38-48)

#### Sec. 38-71. - Camping.

The city has no facility for trailers, campers and similar wheeled vehicles in any city park. Facilities for overnight camping in tents or on the ground are available for groups, such as scout troops, at Robert King High Park. A permit is required in order to use these facilities.

(Code 1967, § 39-62; Code 1980, § 38-50)

#### Sec. 54-1. - Definitions.

The following words, terms and phrases, when used herein, shall have the meanings ascribed to them in this Code, except where the context clearly indicates a different meaning:

*Assembly* means any organized: (i) company of persons that is collected together in one place, or (ii) demonstration or rally of persons that does not meet the definition of "parade" set forth herein. The term "assembly" does not include:

- (1) A special event as defined in this section.
- (2) Still photography, motion picture photography, or electronic (television) photography for commercial purposes, on any public roadway, sidewalk, street, park, causeway, beach, lagoon, or on any city-owned property or facility in the city for which a commercial photographic permit is required under section 41-26 of this Code.

*Assembly permit* means a permit as required by sections 54-6.2 or 38-74 of this Code.

*Benefactor* means the owner of the business advertised in the sign whose agent, employee, contractor, promoter, or other representative did or caused the posting, placing or affixing of any sign.

*Business* means any commercial or industrial activity, entity, or event in or for which any goods or services are made, sold or offered for sale or other consideration, pecuniary or otherwise.

*Engineering standards* means the minimum standards pertaining to the design and construction of all public works constructed in the right-of-way. These standards are in book form entitled "Engineering Standards for Design and Construction" and present the latest engineering standards as an aid to both design and construction and are deemed as being incorporated by reference herein.

*Governmental applicants* means the City of Miami or its agencies or instrumentality thereof, or as identified by the city manager or designee.

*Law* means all duly enacted and applicable federal, state, county and city laws, ordinances, codes, rules, regulations and orders.

*Maintenance* means the upkeep or preservation and acts of repair and other acts to prevent a decline, lapse or cessation from an existing state or condition; to keep from falling, declining or ceasing; to keep in good order; keep in proper condition; keep in repair, as it pertains to the private property and public right-of-way, as applicable, and as are encompassed by the provisions of this chapter.

*Maintenance costs* means any cost incurred for the purpose of performing maintenance within the public right-of-way. This includes costs of labor, materials, equipment and other public works operational costs.

*Non-governmental applicants* means any applicant who is not a governmental applicant as defined by this section.

*One day* means a 24-hour period from noon to noon.

*Parade* means any organized moving:

- (i) March,
- (ii) Ceremony,
- (iii) Show,
- (iv) Exhibition,
- (v) Pageant,
- (vi) Footrace,
- (vii) Bicycle race,
- (viii) Motorcade,
- (ix) Procession of any kind, or
- (x) Similar display.

A "parade" does not include:

- (1) Funeral processions.
- (2) Students going to and from school classes or participating in educational activities, provided this conduct is under the immediate direction and supervision of the proper school authorities.
- (3) Any governmental agency acting within the scope of its functions.
- (4) A "special event" as defined herein;
- (5) A motor vehicle or motor vehicles operating in compliance with all applicable traffic laws, ordinances and regulations; and
- (6) A pedestrian or pedestrians merely crossing a street, or traversing a sidewalk, while obeying all applicable traffic and pedestrian laws, ordinances and regulations, and which crossing or traversing does not obstruct other pedestrian traffic on a sidewalk.

*Parade permit* means a permit as required by sections 54-6 or 38-74 of this Code.

*Person* means any individual, corporation, partnership, limited liability company, association, joint venture, for-profit organization, contractor, subcontractor, affiliate, agent, representative, governmental institution, not-for-profit organization, or other legal entity of any kind, any lawful trustee, successor, assignee, transferee, heir, or personal representative thereof, but shall not mean the city.

*Public right-of-way* as used in this article shall mean any dedicated or undedicated public street, highway, sidewalk, parkway or alley, public ways, public space(s) and other public places within the city.



*Sign* means any poster, card, cardboard, advertisement, or paper device or any identification, description, illustration, or other device located on any portion of the public right-of-way, street, or side walk surface which directs attention to a product, place, activity, person, institution, business, message or solicitation.

*Special event* means an outdoor public celebration or gathering which involves:

- (1) Either:
  - a. The use of public parks;
  - b. Public rights-of-way; or
  - c. Privately-owned property.
- (2) When it is reasonably expected that more than 300 people will gather for seven or fewer contiguous days;
- (3) Which includes entertainment, dancing, music, dramatic productions, art exhibitions, parades or the sale of merchandise, food or alcohol, or any combination of the foregoing;
- (4) Which requires the erection of stages, utility poles, booths, tents, or other temporary structures, or the use of parked vehicles or of permanent structures; and
- (5) Which of necessity requires for its successful execution the provision and coordination of municipal services to a degree significantly over and above that which the city routinely provides under ordinary everyday circumstances.

*Special event permit* means a permit as required by sections 54-6.3 or 38-74 of this Code.

*Street* or *streets* means the surface, the air space above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the city holds any kinds of property interest or over which the city exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to a permit for construction in or excavation of or use of the public right-of-way, but shall not include city-owned buildings or city private property.

*Visibility triangle* means an area on private property and within the public right-of-way where any material obstruction to visibility is prohibited which would result in concealment of a child over two and one-half feet in height approaching an intersection, or would conceal an approaching automotive vehicle or cyclist from such a child. The visibility triangle shall be measured in accordance with section 3.8.4 of the Miami 21 zoning code and shall include the area bounded by the extension of the diagonal vision clearance

line to the center line of the intersecting streets at all street intersections and the area perpendicular to the diagonal vision clearance line from the base building line to the centerline of the intersecting streets at all applicable intersections of driveways with streets.

(Ord. No. 12505, § 3, 3-25-04; Ord. No. 12545, § 2, 6-10-04; Ord. No. 12584, § 2, 9-9-04; Ord. No. 12639, § 2, 1-13-05; Ord. No. 12711, § 2, 7-7-05; Ord. No. 12928, § 3, 6-28-07; Ord. No. 12971, § 2, 2-14-08; Ord. No. 13087, § 2, 9-10-09; Ord. No. 13467, § 2, 6-12-14)

Sec. 54-2. - Obstruction of free passage on sidewalks, etc.

- (a) *Purpose.* It is the intent of this section to eliminate the obstruction of free passage over, on or along a street, sidewalk, or public right-of-way, whether such obstruction results from the manner in which a person or number of persons shall stand, loiter, walk, sit, lie or camp on said street, sidewalk or public right-of-way.
- (b) *Definitions.* For purposes of this section, the following words shall be defined as provided herein:
  - (1) An "obstruction" within the meaning of this section shall be construed to mean to so occupy the sidewalk, street or public right-of-way that the free use and enjoyment thereof by the public is, in any way interrupted or interfered with, or the free ingress or egress to or from any building fronting on any public right-of-way is impaired.
  - (2) The term "camp" or "camping" shall mean the use of a street, sidewalk or public right-of-way, including a public transit stop, bench or other public property on any street, sidewalk or public right-of-way, as a temporary or permanent place of dwelling, lodging, or residence, or as a living accommodation at anytime. Indicia of camping may include, but are not limited to, storage of personal belongings, using tents or other temporary structures for sleeping or storage of personal belongings, carrying on cooking activities or making any fire, or any of these activities in combination with one another or in combination with either sleeping or making preparations to sleep (including the laying down of bedding for the purpose of sleeping).
- (c) *Prohibited behavior.* It is unlawful for any person or any number of persons:
  - (1) To so stand, loiter, walk, sit, lie, or camp upon any street, sidewalk or public right-of-way in the city so as to obstruct free passage over, on or along said street, sidewalk or public right-of-way, after a request by a law enforcement officer to move on so as to cease blocking or obstructing free passage thereon.
  - (2) By placing an object or objects on a street, sidewalk or public right-of-way in the city, to cause a condition of obstruction or blockage of a street, sidewalk or public right-of-way so as to obstruct free passage over, on or along said street, sidewalk or public right-of-way.
- (d) *Applicability.* The provisions of subsection (c)(1) hereof apply only when a person or number

of persons shall stand, loiter, walk, sit, lie, or camp on a street, sidewalk or public right-of-way so as to obstruct free passage thereon and shall refuse to obey a request by a law enforcement officer to move on; mere refusal to move on is not enough to support the offense - there must be an actual blocking of free passage over, on or along said street, sidewalk or public right-of-way. This section shall not apply to "assemblies" or "parades" as defined in section 54-1, taking place on a street, sidewalk or public right-of-way, unless any such assembly or parade creates and/or causes a hazardous condition or threatens public safety.

(Ord. No. 13392, § 1, 6-13-13)

**Editor's note**— Prior to the reenactment of section 54-2 by Ord. No. 13392, § 1, adopted June 13, 2013, Ord. No. 12505, § 2, adopted March 25, 2004, repealed § 54-2 in its entirety, which pertained to obstructions of free passage on sidewalks, etc., and derived from Ord. No. 9241, §§ 1, 2, adopted February 11, 1981, and the Code of 1980, § 37-53.1.

Sec. 54-3. - Permit required for work that obstructs or closes a street, or sidewalk or impedes traffic; fees; waiver of fees.

- (a) *Scope.* No person shall perform or conduct work in the public right-of-way, such as digging, drilling, repaving, etc., which obstructs, closes, or causes to be obstructed or closed, any street, sidewalk, or any other part of the public right-of-way in this city, or which impedes the general movement of vehicular or pedestrian traffic, without first having obtained a permit approved by the police department, the public works department, the off-street parking department, the risk management department, the neighborhood enhancement team department, and the transportation office. After approval by the departments of police, public works, off-street parking, risk management, neighborhood enhancement team and the transportation office, the city manager, or designee, shall issue a permit. No person shall apply for a permit to perform or conduct work in the public right-of-way without disclosing in writing on the permit application form the person(s) on whose behalf such work in the public right-of-way is being performed or conducted. If such work is being performed by one or more person(s) on behalf of any other person(s) for using, constructing in, excavation of, maintenance of, owning and/or operating any type or manner of system, equipment, or device within the public rights-of-way, then all persons must comply with all application and permitting requirements of the city. Failure of any person(s) to fully disclose his/her/their interest/participation/representation in the permit application and/or to fulfill all city requirements for issuance of the permit shall result in (1) immediate revocation by the city, without the necessity of any further action, hearing, or proceeding, of any permit previously granted resulting in such permit becoming null and void, or (2) issuance by the city of a

written notice that such permit will not be granted, as the case may be, due to violation of this provision by the person(s) who applied for such permit. The city shall have the right to take all legal measures and seek all available remedies to enforce this disclosure provision.

- (b) *Conditions.* Such permit shall set forth minimal reasonable conditions, as permitted by Law, necessary for the protection of property and personal safety, the restoration of the public right-of-way to a condition satisfactory to the city, and any on-going maintenance or reparations for un-repaired conditions or damages that may be required of the person(s) under the circumstances and extent of the work to be performed or conducted by such person(s) under such permit. Any violation of the conditions set forth and/or any violations under applicable law shall render such permit null and void, without the necessity of any further action, hearing, or proceeding. Such permit shall cover the length of time necessary and reasonable according to the type of activity involved.
- (c) *Indemnity, hold harmless and insurance.* It shall be a condition precedent to the issuance of any such permit that the applicant shall assume all civil liability for applicant's acts of omission or commission from all claims, suits or actions of any kind whatsoever arising out of or resulting from the obstruction or closure, the issuance of the permit, or the operations or activities of the permittee and shall, further, hold the city, its officials, and employees harmless for any injuries, losses, or damages arising or resulting from the permitted work including any injuries, losses, or damages resulting from alleged negligent acts or omissions on the part of the city. The permittee shall be solely responsible for all activities and the installation and maintenance of traffic-control devices. The applicant shall ensure that adequate safety precautions are in effect at all times during the term of the permit. It shall be a further condition precedent to the issuance of any such permit for work to be performed in the public right-of-way that the permit holder(s) is/are jointly and severally responsible, at each permit holder's expense, for any damages regarding restoring the public right-of-way to its original condition before installation of facilities.
  - (1) *Non-governmental applicant(s).* Prior to the issuance of any such permit, the non-governmental applicant(s) shall submit to the city a certificate of insurance for each non-governmental applicant in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate, and any endorsements thereto, including, but not limited to, premises and operations liability, contingent and contractual exposures, personal and advertising injury, products and completed operations, and host liquor liability, if applicable. In addition, the applicant hereby agrees to provide additional insurance requirements, including but not limited to umbrella liability, or any additional requirements or endorsements as may be applicable, in connection with the scope of services contemplated by the permit. The certificate must reflect primary and noncontributory language and list the city as an additional insured. The certificate must also include coverage for all owned, hired, and non-owned vehicles with a combined

single limit of \$1,000,000.00, also listing the city as an additional insured, and must further afford coverage for worker's compensation as required by Florida statute. The insurance herein required shall remain in full force and effect during the entire term of the permit. Additionally, all such insurance for non-governmental applicant(s) shall be subject to annual review by the city's risk management department and the applicant shall be required to update as necessary to protect the city as set forth in this section.

- (2) *Government applicant(s).* Prior to the issuance of any such permit, the governmental applicant(s) shall submit to the city a certificate of insurance or letter of self-insurance for each governmental applicant in accordance with and subject to the limitations as set forth in F.S. § 768.28.

(d) *Temporary obstruction of streets and sidewalks.*

- (1) Any permit issued pursuant to this chapter under this section may be revoked at any time for violation of the terms of the permit. The city manager or his designee may revoke this permit with justification.
- (2) The permit holder shall not locate a temporary office, trailer, portable toilets, equipment or storage of materials and supplies within the temporary obstructed right-of-way. Such temporary office, trailer, portable toilets, equipment or storage of materials and supplies may be allowed by the public works department subject to a separate fee subsection (e)(4) in addition to the fee for a permit for the partial or full obstruction or closure listed in subsection (e)(3). A violation of this section shall result in a fine of \$262.50 per day for each violation.
- (3) If the dimensions of the obstruction exceed the dimensions allowed by the permit, the permittee and the building owner shall jointly be assessed a fine equal to \$262.50 per day for each violation, plus any appropriate additional fees for the obstruction.
- (4) The permittee must provide a construction staging plan showing the location of lifting equipments, if applicable, ingress and exit points, and a signed and sealed statement from a registered professional engineer in the state that no suitable onsite alternative exists.
- (5) For purposes of this section, the following definitions shall apply:

*Construction fence screen* is a light, flexible fabric bearing printed text and pictures to give information and with edge grommets to facilitate attachment to a rigid frame.

*Construction windscreen* is a visual/dust barrier composed of a flexible, woven fabric with edge grommets to facilitate attachment to a rigid frame.

*Temporary construction fence* is used when contracting or planning to construct improvements on the premises and which facilitates temporary security and surety for the premises.

- (6) Subject to compliance by the permit holder with applicable provisions of the sign codes

of Miami-Dade County and the city, the permit holder may affix a construction fence screen or construction windscreen containing onsite advertising to the temporary construction fence abutting or located in the public right-of-way subject to an additional fee listed in subsection (e)(5). The dimensions of the construction fence screen or construction windscreen shall not exceed the dimensions of the temporary construction fence, and shall comply with section 33-99 of the Miami-Dade County Code. The content of the onsite advertising shall be limited to pictorial and text information advertising the sale or rental of the premises, construction actually being done on the premises, or future construction to be done on the premises on which the onsite advertising is located. For purposes of this section, such advertising described in the preceding sentence shall only be onsite advertising. No advertising is allowed for goods, off-site products or services, alcoholic beverages, tobacco products or adult entertainment as defined by the city zoning code. Nothing in this section shall be interpreted to permit a sign where the sign copy does not pertain to the use of the property, units sold, or the sale or lease of the property on which sign is displayed and which does not identify the place of business as purveyor of the units advertised on the sign.

(e) *Fees.*

- (1) A fee of \$120.00 shall accompany each permit application to the police department, to be retained by the city regardless of action taken in the grant or denial of the permit.
- (2) An initial inspection fee of \$25.00 shall accompany each permit application to the public works department.
- (3) A non-refundable fee for a permit issued under this article for the partial or full obstruction by construction related activities exceeding five days in duration shall be as follows.

- a. \$0.20 per linear foot per day of sidewalk/curb usage.
- b. \$0.30 per linear foot per day of parking lane usage.\*

\*This fee is in addition to fees payable under chapter 35 of this Code, as amended.

- c. \$0.35 per linear foot per day of lane closure or partial lane closure of traffic and auxiliary lane usage.

The fees shall accompany each permit application to the department of public works for the use of the public right-of-way.

- (4) A non-refundable fee for a temporary office, trailer, portable toilets, equipment or storage of materials or supplies within the partial or full obstruction area shall be as follows:
  - a. \$0.10 per linear foot per day of sidewalk/curb/swale usage.

- b. \$0.15 per linear foot per day of parking lane usage.
- c. \$0.20 per linear foot per day of lane closure or partial lane closure usage.

The fees shall accompany each permit application to the department of public works for the use of the public right-of-way.

- (5) A non-refundable fee of \$0.06 per square foot per day of construction fence screen or construction windscreen containing advertising affixed to temporary construction fence located abutting the public right-of-way or in the public right-of-way. The fee shall accompany each permit application.
- (6) All fees collected by the public works department in accordance with subsection (e)(3), (e)(4) and (e)(5) shall be deposited in a rollover account to be known as the lane closure fund. This account shall be used for the inspection of lane closures, advertising construction fence screens and construction windscreens, and maintenance of the public right-of-way.
- (7) Waiver of fees. The fees described in subsection (e)(3), (e)(4) and (e)(5) shall not apply to the city or any other federal, state, county, city, school district entity, or for construction, excavation, and repair within the public right-of-way. The fees described in subsection (e)(1), (e)(3), (e)(4) and (e)(5) herein above may be waived or reduced by the city commission if the commission determines that such a waiver or reduction is in the city's best interest.
- (8) After the fact permit fee. For any public street or alley closure described in section 54-3, performed without the required permits and inspection, quadruple the application and inspection fee described in subsection (e)(1) and (2) herein.
- (f) *[Special revenue fund.]* The revenues received will be placed in a special revenue fund. Ninety percent of this revenue will be used for public right-of-way improvements and repairs. Ten percent of special revenue will be used for public works department training, materials and equipment related to road closures. Expending these funds will be at the discretion of the city manager by recommendation of the public works or capital improvement directors.
- (g) *Public gatherings.* This section shall not prevent any person or persons from assembling on the streets or sidewalks, or in any park, or on private property, for the purpose of making any speech, engaging in spontaneous expression, or conveying any message to the public or government without holding a permit pursuant to this section. In addition, this section shall not apply either to an "assembly," to a "parade" or to a "special event," as they are defined in section 54-1.

(Code 1967, § 54-3; Ord. No. 8995, 1, 10-17-79; Ord. No. 9532, § 1, 12-9-82; Ord. No. 10658, § 3, 10-12-89; Ord. No. 11045, § 4, 3-11-93; Code 1980, § 54-3; Ord. No. 11276, § 3, 7-13-95; Ord. No. 12505, § 3, 3-25-04; Ord. No. 12545, § 2, 6-10-04; Ord. No. 12584, § 2, 9-9-04; Ord. No. 12639, § 2, 1-13-05; Ord. No. 12919, § 1, 5-

10-07; Ord. No. 12928, § 4, 6-28-07; Ord. No. 13087, § 2, 9-10-09; Ord. No. 13142, § 14, 2-11-10; Ord. No. 13195, § 5, 9-27-10; Ord. No. 13276, § 2, 7-28-11; Ord. No. 13467, § 2, 6-12-14; Ord. No. 13519, § 2, 5-14-15)

**Editor's note**— Ord. No. 12584, § 2, adopted September 9, 2004, changed the title of § 54-3 from "Permit required for work or special events that obstruct or close street or sidewalk or impede traffic; fees; waiver of fees" to "Permit required for work that obstructs or closes a street, or sidewalk or impedes traffic; fees; waiver of fees."



[http://miamifl.ig2.com/Citizens/Detail\\_LegiFile.aspx?Frame=&MeetingID=2398&MediaPosition=&ID=7440&CssClass=](http://miamifl.ig2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=2398&MediaPosition=&ID=7440&CssClass=)

## ARTICLE II. - PUBLIC FEEDING

### Sec. 25-25. - Regulations for large group feedings.

- (a) Definitions. The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

*Director* means the director of the city's department of human services including his/her designee.

*Large group feeding* means an event intended to attract, attracting, or likely to attract 25 or more people, including distributors and servers for the delivery or service of food in a public space. Excluded from this definition are activities of city permitted, licensed, or contracted concessionaires, lessees, or licensees.

*Public space* means any dedicated or undedicated public street, highway, sidewalk, park, parkway, right-of-way, alley, public ways, or any other public places within the city, including city-owned buildings or city-property. Public space shall also include the buildings of any governmental agency within the city including federal, state, and county owned buildings.

*Street* or *streets* means the surface, the air space above the surface, and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the city holds any kind of property interest or over which the city exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon including city-owned buildings or city-property.

- (b) Except for activities of a governmental agency within the scope of its governmental authority or unless specifically permitted to do so by a permit or approval issued pursuant to this section by the city commission or the city manager, as applicable, it shall be unlawful to undertake large group feedings in public spaces unless the person(s) serving the food:

- (1) Obtains a large group feeding permit issued by the director. The director shall issue a large group feeding permit based upon the following criteria:
  - a. The application must be submitted at least two business days prior to the planned large group feeding event.
  - b. The application must contain the following information:
    1. The name of the individual(s) or organization that will be serving or distributing food;
    2. The date(s) when food is anticipated to be served or distributed;
    3. The times of day when food service and distribution is anticipated to be served or distributed on each date listed in the notice;
    4. Identification of one of the permitted large group feeding locations designated by the city manager, as specified herein, at which the applicant desires to serve or distribute food; and
    5. The approximate or expected number of food preparers and servers on the site where the food is anticipated to be served or distributed and the approximate or expected number of individuals that will be served.

- c. Large group feeding permits will be limited to one per day for any given designated feeding location and permits will be issued on a first come, first served basis, based on the availability of the desired designated feeding location.
  - d. Any individual or organization is permitted a maximum of one large group feeding permit per week regardless of which designated feeding location is utilized. Individuals associated with an organization must indicate such association on any application for a large group feeding permit and this limitation will apply to the organization even if multiple individuals may desire to apply for a permit on behalf of the organization.
  - e. Organizations who submit applications for a large group feeding permit through individuals without those individuals disclosing their association with the organization will be subject to being precluded from receiving large group feeding permits for a period of up to 12 months.
- (2) The permit holder shall remove or cause the removal of substantially all trash or debris from the feeding site that was generated by the service or distribution of food and deposit the trash or debris in the provided public trash receptacle(s) or in a private trash receptacle if permission from the receptacle owner was obtained.

The city will use its best efforts to provide support services at designated feeding locations for any permitted large group feeding, including, but not limited to containers or receptacles for disposal of waste; restroom facilities; handwashing stations; and the availability of city staff to assist with outreach to the homeless.

- (c) Designated feeding locations. The city manager shall identify at least five designated feeding locations within the city at which large group feedings are permitted to take place that have the following characteristics:
- (1) Within easy walking distance to locations where large groups of homeless are known to congregate;
  - (2) Paved;
  - (3) Adequate parking for those conducting the large group feedings; and
  - (4) Adequate lighting for the large group feeding activities.

The city manager is authorized to amend the designated feeding locations from time to time and as needed, within the city manager's sole discretion, to best balance the needs of all parties involved in large group feedings.

- (d) Penalties. A violation of this section shall be enforced against the individual or organization by the issuance of a civil code enforcement fine in the amount of \$250.00 for a first occurrence and a civil fine in the amount of \$500.00 for each subsequent occurrence in accordance with chapter 2, article X of the City Code. Repeat violations in any one calendar year may also subject the repeat violator to being precluded from receiving large group feeding permits for a period of up to 12 months.

(Ord. No. 13907, § 2, 6-25-20)



# MIAMI PARKING AUTHORITY

## DOWNTOWN PARKING LOCATOR



### MPA SURFACE LOTS

- Lot 11** NW 3 Ave. & NW 3 Ct. bet. NW 1-2 St.
- Lot 12** NW 3 Ave. & NW 3 Ct. bet. NW 2-3 St.
- Lot 13** NW 3 Ave. & NW 3 Ct. bet. W 3-4 St.
- Lot 14** NW 3 Ave. bet. Flagler St. & SW 1 St.
- Lot 15** Under I-95, SW 2 Ave. & River Dr. bet. SW 1-2 St.
- Lot 16** Under I-95, SW River Dr. bet. SW 2-3 St.
- Lot 17** Under I-95, SW River Dr., SW 3 St.
- Lot 19-1** Biscayne Blvd. bet. NE 4-5 St.
- Lot 19-2** Biscayne Blvd. bet. NE 3-4 St.
- Lot 19-3** Biscayne Blvd. bet. NE 2-3 St.
- Lot 19-4** Biscayne Blvd. bet. NE 1-2 St.
- Lot 19-5** Biscayne Blvd. bet. NE 1 & E. Flagler St.
- Lot 19-6** Biscayne Blvd. bet. SE 1 & E. Flagler St.
- Lot 20** SE 2 St. & S. Biscayne Blvd.
- Lot 32** Under I-95, NW 3 Ave. bet. Flagler St. & 1 St.
- Lot 33** Under I-95, SW 2 Ave. & 1 Ct. bet. SW 1-2 St.
- Lot 34** Under Metrorail, SW 1 Ave. bet. 2-3 St.
- Lot 36** Under I-95, SW 2 St. & SW 1 Ct. (S. Side)
- Lot 37** SW 2 St. bet. SW 1 Ave. & S Miami Ave.
- Lot 38** Under I-95, SW 1 Ave. bet. SW 2-3 St.
- Lot 41** 120 NE 2 St.
- Lot 42** SE 1 Ave. bet. SE 3-4 St.
- Lot 43** 56 SW 1 St.
- Lot 49** Biscayne Blvd. & NE 2 Ave. bet. NE 11-12 St.
- Lot 51** NE 1-2 Ave. bet. NE 11-12 St.
- Lot 58** NW 1 Ct. bet. NW 8-9 St.
- Lot 59** NW 2 Ave. & 1 Ct. bet. NW 7-8 St.
- Lot 60** NW 1 Ct. bet. NW 6-7 St.
- Lot 76** Under I-395, N Miami Ave. & NE 1 Av. bet. NE 11-12 St.
- Lot 77** Under I-395, NW 1 Ave. & N. Miami Ct. bet. NW 12-13 St.
- Lot 78** Under I-395, N Miami Ave. & N Miami Ct. bet. NW 12-13 St.
- Lot C-ARSHT** NE 2 Ave. & NE 12 St.

### MPA GARAGE LOCATIONS

- G1** Courthouse Center  
40 NW 3rd Street, Downtown
- G2** Cultural Center Garage  
90 SW 1st Street, Downtown
- G3** College Station Garage  
190 NE 3rd Street, Downtown
- G4** Convention Center Garage  
100 SE 2nd Street, Downtown

### METROMOVER STATIONS

- MA** School Board
- MB** Omni
- MC** Eleventh Street
- MD** Park West
- ME** Freedom Tower
- MF** College North
- MG** Arena/State Plaza
- MH** Government Center
- MI** Miami Avenue
- MJ** Third Street
- MK** Knight Center
- ML** Bayfront Park
- MM** First Street
- MN** College/Bayside
- MO** Riverwalk
- MP** Fifth Street



# MIAMI PARKING AUTHORITY

## CITY OF MIAMI PARKING LOCATOR



### MPA SURFACE LOTS

- Lot 1** US 1 & SW 27 Ave.
- Lot 6** 3500 Main Highway, Coc. Grove
- Lot 7** 6116 NW 7 Ave.
- Lot 18** 1320 NW 12 St.
- Lot 22** Under Rickenbacker Flyover/26 Rd. bet. I-95 NB & S. Miami Ave.
- Lot 23** Under Rickenbacker Flyover/26 Rd. bet. Brickell Ave. & S. Miami Ave.
- Lot 26** Civic Center/N. Side 1355 NW 12 St. bet. NW 13-14 Ave.
- Lot 28** Under I-95, SW 4 Ave. bet. 6-7 St.
- Lot 29** Under I-95, SW 4 Ave. bet. SW 7-8 St.
- Lot 30** SW 3 Ave. & Coral Way
- Lot 40** NW 17-18 Ave. bet. NW 35-36 St.
- Lot 43** 56 SW 1st St.
- Lot 44** SW 16 Ave. & SE 17 Ave. bet. SW 6 St. & SE 7 St.
- Lot 45** SW 17 Ave. bet. SW 3 St. & SE 4 St.
- Lot 46** SW 17 Ave. bet. SW 2-3 St.
- Lot 48** US1, SW 27 Ave. & SE 28 Lane
- Lot 52** Under I-95, NE 1 Ct. bet. NE 36-37 St.

- Lot 53** Under I-95, NE 1 Ct. bet. NE 36-37 St.
- Lot 54** Under I-95, NE 2 Ave. bet. 37-38 St.
- Lot 55** Under I-95, NE 1 & 2 Ave. bet. NE 36-37 St.
- Lot 67** 3349-3351 Pan Am Dr. Coc. Grove
- Lot 68** Watson Island, S. Side Lot, 1050 McArthur Cswy.
- Lot 70** Watson Island Boat Ramp, 1050 McArthur Cswy.
- Lot 71** 2710 S. Bayshore Dr.
- Lot 72** 2600 S. Bayshore Dr.
- Lot 79-A** 5601 NW 17 Ave.
- Lot 79-B** 1630 NW 58 Terr.
- Lot 79-C** 5901-5923 NW 17 Ave.
- Lot 79-D** 1700 NW 58 St.
- Lot 82** 901 SW 15 Ave.
- Lot 85** 3191 Grand Ave.
- Lot 89** 474 NW 4 St.
- MARLINS** 1402 NW 7 St.

### MPA GARAGE LOCATIONS

- G8** Oak Avenue Parking Plaza  
2850 Oak Avenue, Coconut Grove
- G9** Allapattah Parking Plaza  
2090 NW 21st Terrace, Allapattah





**Miami  
FL**

**Ordinance  
14032**

ADOPTED WITH  
MODIFICATION(S)  
Oct 28, 2021 9:00 AM

**AN ORDINANCE OF THE MIAMI CITY COMMISSION AMENDING CHAPTER 37 OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED, TITLED "OFFENSES-MISCELLANEOUS;" MORE PARTICULARLY BY ADDING A NEW SECTION TO PROHIBIT ENCAMPMENTS ON PUBLIC PROPERTY; PROVIDING FOR DEFINITIONS AND PENALTIES; CONTAINING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

Information

**Department:** Commissioners and Mayor **Sponsors:** Vice Chair, District Three  
Joe Carollo  
**Category:** Elected Official Item

Attachments

[Agenda Summary and Legislation](#)  
[10623 Submittal-Constance Collins-Letter About Anti-Encampment Ordinance](#)  
[10623 Submittal-Commissioner Joe Carollo-Flagler District BID Letter of Support](#)

Financial Impact

Body/Legislation

WHEREAS, the City of Miami ("City") owns or maintains public properties that have associated outdoor areas including but not limited to parking areas, greenspaces, lawns, landscaping, terraces, outdoor walkways, courtyards, and similar facilities which are generally open to the public but are not suitable for overnight use or camping ("Properties"); and

WHEREAS, the Properties exist for the purpose of facilitating ingress and egress to all buildings and facilities and maintaining attractive and welcoming exteriors to be enjoyed by all members of the public; and

WHEREAS, the unauthorized use of the Properties for camping where the Properties are neither intended for nor designed as a camp site, campground, or site for temporary human habitation tends to impair, obstruct, or otherwise detract from the use for the Properties' intended purpose; and

WHEREAS, the act of unauthorized camping on the Properties tends to endanger the health, safety, and wellbeing of those engaged in such camping as well as the public at large;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings found in the Preamble of this Ordinance are adopted by reference and incorporated as fully set forth in this Section.

Section 2. Chapter 37 of the Code of the City of Miami, Florida as amended, titled "Offenses-Miscellaneous," is further amended in the following particulars:[1]

"CHAPTER 37

OFFENSES-MISCELLANEOUS

\* \* \* \*

Sec. 37-16.

(a) Definitions.

Unless the particular provisions or the context otherwise requires, the definitions contained in this Section shall govern the construction, meaning, and application of words and phrases used in this Chapter.

Code Inspector means the authorized agent or employee of the City so designated in Chapter 2, Article X of the City Code whose duty it is to ensure Code compliance.

Encampment means any one or more of the following:

1. The unauthorized use of fabric, metal, cardboard, or other materials as a tent or other temporary structure for living accommodation purposes or human habitation;
2. The unauthorized use of a Heating Device in an area; or
3. The unauthorized accumulation of personal property (other than Durable Medical Equipment) that would not fit in a container three feet (3') high, three feet (3') wide, and three feet (3') deep.

Department means the Department of Human Services.

Durable Medical Equipment means equipment customarily used for medical purposes, able to withstand repeated use, and generally not useful to a person in the absence of illness or injury. Non-exclusive examples of such equipment include wheelchairs, canes, crutches, and portable oxygen tanks.

Heating Device means a camp stove, grill, heater, or other container or device capable of generating or containing an open flame.

Police Officer means a law enforcement officer as defined in Section 943.10(1), Florida Statutes, as amended.

Public Place means an outdoor area owned, managed or controlled by the City to which the public has access, including but not limited to public rights-of-way, parks, streets, sidewalks, hiking and biking trails, transit facilities, underpasses, and parking lots.

(b) Prohibitions:

1. Encampment in a Public Place in the City is unlawful.
2. Any person who violates this Section shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in Section 1-13 of the City Code or as a civil violation as set forth in Chapter 2, Article X of the City Code.

(c) Procedure for Enforcement.

- (1) A Police Officer or Code Inspector may issue a citation for a violation of this Article if prior to issuing the citation:

(i) The Police Officer or Code Inspector has tendered a written warning to the person stating that a failure to comply with the City's prohibition against Encampment may result in the issuance of a citation to the person or in the person's arrest; and

(ii) The Police Officer or Code Inspector has provided a reasonable time (two [2] hours) for the person to pick up his or her belongings and comply with the prohibition, yet the person has not complied.

The written warning required by Subsection (c)(1)(i) may be accompanied by written information regarding the availability of medical treatment (including mental health treatment) or social services (including temporary shelter or drug or alcohol rehabilitation).

- (2) A Police Officer may arrest a person for a violation of this Article if prior to the arrest:

(i) The Police Officer has tendered the written warning required by Subsection (c)(1)(i) of and has provided a reasonable time (two [2] hours) for the person to pick up his or her belongings and comply with the prohibition, yet the person has not complied;

(ii) The Police Officer has verified that there is an available shelter bed for the person and the person has refused the offer of shelter; and  
(iii) In the event of an arrest pursuant to this Section, the Police Officer will follow the established City policies for the handling and storage of the person's property.

\* \* \* \*\*

Section 3. If any section, part of a section, paragraph, clause, phrase, or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 4. This Ordinance will not be enforced until Resolution No. R-21-0373 adopted September 13, 2021 directing the City Manager to designate an area or areas in the City providing for permitted temporary encampment sites or other shelter options for homeless individuals is realized pursuant to the parameters discussed by the City Commission on Second Reading of this Ordinance.

Section 5. This Ordinance shall become effective thirty (30) days after final reading and adoption thereof.  
[2]

[1] Words and/or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remaining provisions are now in effect and remain unchanged. Asterisks indicate omitted and unchanged material.  
[2] This Ordinance shall become effective as specified herein unless vetoed by the Mayor within ten (10) days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective immediately upon override of the veto by the City Commission or upon the effective date stated herein, whichever is later.

## Meeting History

<b>Sep 13, 2021 9:00 AM</b>	<b>City Commission</b>	<b>City Commission Meeting</b>	 <b>Draft</b>
<b>RESULT:</b>	<b>PASSED ON FIRST READING [4 TO 1]</b>	<i>Next: 10/14/2021 9:00 AM</i>	
<b>MOVER:</b>	Joe Carollo, Commissioner, District Three		
<b>SECONDER:</b>	Jeffrey Watson, Commissioner, District Five		
<b>AYES:</b>	Alex Diaz de la Portilla, Joe Carollo, Manolo Reyes, Jeffrey Watson		
<b>NAYS:</b>	Ken Russell		
<b>Oct 14, 2021 9:00 AM</b>	<b>City Commission</b>	<b>City Commission Meeting</b>	 <b>Draft</b>
Note for the Record: Item SR.2 was deferred to the October 28, 2021, City Commission Meeting.			
<b>RESULT:</b>	<b>DEFERRED [UNANIMOUS]</b>	<i>Next: 10/28/2021 9:00 AM</i>	
<b>MOVER:</b>	Manolo Reyes, Commissioner, District Four		
<b>SECONDER:</b>	Ken Russell, Vice Chair, District Two		
<b>AYES:</b>	Ken Russell, Joe Carollo, Manolo Reyes, Jeffrey Watson		
<b>ABSENT:</b>	Alex Diaz de la Portilla		
<b>Oct 28, 2021 9:00 AM</b>	<b>City Commission</b>	<b>City Commission Meeting</b>	 <b>Draft</b>
<b>RESULT:</b>	<b>ADOPTED WITH MODIFICATION(S) [4 TO 1]</b>		
<b>MOVER:</b>	Joe Carollo, Jeffrey Watson		
<b>SECONDER:</b>	Manolo Reyes, Commissioner, District Four		
<b>AYES:</b>	Alex Diaz de la Portilla, Joe Carollo, Manolo Reyes, Jeffrey Watson		
<b>NAYS:</b>	Ken Russell		

Miami Dade County Code

ARTICLE XVIII. - PROHIBITION ON OVERNIGHT CAMPING

Sec. 21-286. - Prohibition on overnight camping.

- (1) Except as otherwise provided for in this Code, there shall be no overnight camping on County facility/property. Overnight camping is defined as the use of outdoor space for living accommodation purposes involving the erection of structures such as the setting up of any tents, shacks, or shelters for sleeping activities, from the hours of sunset to sunrise. The provisions of this chapter shall apply to the incorporated and unincorporated areas of Miami-Dade County.
- (2) Any person violating this section shall, upon being warned by a County official or a law enforcement officer, cease the prohibited activity. If the person continues the prohibited activity after such warning, the official or law enforcement officer may direct the individual to leave the premises. Any individual who does not leave as directed is subject to arrest for trespassing pursuant to Section 810.09 Florida Statutes.
- (3) Any homeless person, as defined in 24 CFR Section 583.5, violating this section shall first be offered an opportunity to go to a homeless shelter by a County official or law enforcement officer, if there is space available at such a shelter. The requirement to offer an opportunity to go to a homeless shelter shall not apply to any sexual predator or sexual offender, as defined in section 21-280 of the Code, or to any person that is otherwise ineligible to stay at a homeless shelter.

(Ord. No. 12-114, § 1, 12-18-12; Ord. No. 18-1, § 1, 1-23-18)





# City of Miami

## Legislation

### Ordinance

City Hall  
3500 Pan American  
Drive  
Miami, FL 33133  
www.miamigov.com

File Number: 15-00058

Final Action Date:

AN ORDINANCE OF THE MIAMI CITY COMMISSION AMENDING CHAPTER 37 OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED, ENTITLED "OFFENSES-MISCELLANEOUS," MORE PARTICULARLY BY ADDING A NEW SECTION TO PROHIBIT CAMPING ON PUBLIC PROPERTY; PROVIDING FOR DEFINITIONS AND PENALTIES; CONTAINING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Miami ("City") owns and maintains multiple properties that have associated outdoor areas including parking areas, greenspaces, lawns, landscaping, terraces, outdoor walkways, courtyards, and similar facilities which are generally open to the public but are not suitable for overnight use or camping; and

WHEREAS, such outdoor areas exist for the purpose of facilitating ingress and egress from City buildings and facilities, and maintaining attractive and welcoming exteriors to City facilities to be enjoyed by all members of the public; and

WHEREAS, the unauthorized use of public property for camping where the property in question is neither intended for nor designed as a camp site, campground, or site for temporary human habitation tends to impair, obstruct, or otherwise detract from the use of the property for its intended purpose; and

WHEREAS, the act of unauthorized camping on public property tends to endanger the health, safety, and wellbeing of those engaged in such camping as well as the public at large;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings found in the Preamble of this Ordinance are adopted by reference and incorporated as fully set forth in this Section.

Section 2. Chapter 37 of the Code of the City of Miami, Florida as amended, entitled "Offenses-Miscellaneous," is amended in the following particulars: {1}

#### "CHAPTER 37

#### OFFENSES-MISCELLANEOUS

\* \* \* \*

#### Sec. 37-11. Camping Prohibited Upon Public Property and Public Rights-of-Way.

##### (a) Definitions:

Unless the particular provisions or the context otherwise requires, the definitions contained in this section shall govern the construction, meaning, and application of words and phrases used in this Chapter.

"Camp" or "Camping" means to place, pitch, or occupy camp facilities; to live temporarily in a camp facility or outdoors; to use Camp Paraphernalia.

"Camp Facilities" means tents, shacks, huts, temporary shelters, or like facilities.

"Camp Paraphernalia" means bedrolls, tarpaulins, cots, bedding, blankets, mattresses, pillows, sleeping bags, hammocks, cooking facilities, and similar equipment.

"Establish" means setting up or moving equipment, supplies, or materials on to Public Property or Private Property to Camp or operate Camp Facilities.

"Maintain" or "Maintaining" means keeping or permitting equipment, supplies, or materials to remain on Public Property or Private Property in order to Camp or operate Camp Facilities.

"Private Property" means all private property including, but not limited to, improved or unimproved lands.

"Public Property" means all public property including, but not limited to, Streets, sidewalks, alleys, improved or unimproved lands, greenspace, parks, and public right-of-way as defined in Section 54-1 of this Code.

"Store" or "Storing" means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

"Street" means the same as defined in Section 54-1 of this Code.

(b) Prohibitions:

1. It is unlawful and a public nuisance for any person to Camp, occupy Camp Facilities, or use Camp Paraphernalia upon any Public Property, unless specifically authorized by this Code. The person shall not be charged with a violation of this Section if, after being warned by a law enforcement officer, the person immediately removes or causes to be removed all Camp Paraphernalia from any Camp Facility.

2. It is unlawful and a public nuisance for any person to Establish or Maintain Camp Facilities or to Store Camp Paraphernalia upon any Public Property, unless specifically authorized by this Code.

(c) Removal of prohibited items:

1. If any Camp Paraphernalia is found on Public Property by a law enforcement officer and there is no person present who claims ownership of it, the officer may cause it to be removed to a secure indoor or outdoor location where it will be held for a period of 90 days. Upon removal of such items, a notice shall be affixed to the site where the removed items were located. The notice shall provide a telephone number and a location where information concerning the retrieval of such items can be obtained. Such notice may be removed after five (5) days. If the items are not claimed by the person supplying sufficient proof of ownership within the 90 days of removal, they shall be deemed

abandoned property and may be disposed of accordingly.

(d) Penalties:

Any person who violates any provision of this section commits a municipal ordinance violation and may be punished as provided in Section 1-13 of the Code of the City of Miami, Florida, as amended.

\* \* \* \*\*

Section 3. If any section, part of a section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 4. This Ordinance shall become effective thirty (30) days after final reading and adoption thereof. {2}

APPROVED AS TO FORM AND CORRECTNESS:

  
\_\_\_\_\_  
VICTORIA MÉNDEZ  
CITY ATTORNEY

Footnotes:

{1} Words and/or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remaining provisions are now in effect and remain unchanged. Asterisks indicate omitted and unchanged material.

2} This Ordinance shall become effective as specified herein unless vetoed by the Mayor within ten (10) days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective immediately upon override of the veto by the City Commission.

# **MIAMI POLICE DEPARTMENT**

## **DEPARTMENTAL ORDERS**



**Jorge R. Colina**  
**Chief of Police**

# City of Miami



ARTHUR NORIEGA, V  
City Manager

## MIAMI POLICE DEPARTMENT

### DEPARTMENTAL ORDERS

#### FOREWORD

The purpose of the City of Miami Police Departmental Orders is to provide policy and procedural guidelines for members in the performance of their duties.

All sworn and civilian employees are able to access the departmental orders via the Miami Police Department Intranet. In addition, all employees can download an eBook version of the departmental orders. The new eBook provides access from any mobile device, immediate search, highlighting, notetaking, and read aloud capabilities.

All employees of the Miami Police Department shall become familiar with these orders and will be governed by them.

Jorge R. Colina, Chief of Police  
City of Miami Police Department

Date: 01.10.20



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**HOMELESS**Section

- 10.1 Policy
- 10.2 Organization
- 10.3 Responsibility
- 10.4 Mission
- 10.5 Definitions
- 10.6 Procedures
- 10.7 Property

**10.1 POLICY:** It is the policy of the City of Miami Police Department to ensure that personnel are sensitive to the needs and rights of our Homeless population, as well as knowledgeable of the department's arrest policies concerning such persons.

**10.2 ORGANIZATION:** The City of Miami has a policy that we shall not arrest visibly homeless persons who live in public for performing acts, criminalized as misdemeanors, such as sleeping, eating, lying down, or sitting in public, when there is no available shelter. It is not a crime to be homeless. This policy should not be construed as protecting persons (whether homeless or not) from arrest for engaging in any other type of criminal activity.

**10.3 RESPONSIBILITY:** It is the responsibility of all City of Miami Police Officers, whether working in an on-duty or off-duty capacity, to abide by this Departmental Order.

**10.4 MISSION STATEMENT:** We must continue to vigorously do our job and enforce the law's which were enacted to ensure a safer community, while extending compassion for homeless persons.

**10.5 DEFINITIONS:**

**10.5.1** A "homeless person". An individual is considered a "homeless person" if he or she " lacks a fixed, regular and adequate night time residence and has a primary night time residency that is: (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations; (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings. The term "homeless person" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a state law". The term "homeless person" does not include any person identified as a registered sex offender under section 775.21 Fla. Stat., as amended, or sexual predator under section 775.215 Fla. Stat., as amended, or sections 21-277 to 21-2185 Miami-Dade County Code. An officer is allowed to make reasonable inquiry to make this determination.

**10.5.1.2** An "available shelter" means a shelter for a period of at least, with a bed, or a mat at least (3) inches thick, at no cost to the homeless person, within the territorial boundaries of the City or within one mile thereof, or if agreed to by the homeless person, within Miami-Dade County, that treats homeless persons with dignity and respect, imposes no religious requirements, and unless agreed to

by the homeless person, does not impose involuntary substance abuse or mental health treatment as a condition for shelter.

**10.5.1.3 "PUBLIC PROPERTY":** "Public Property" includes all property owned by any governmental entity (federal, state or local). "Public Property" shall not include property which has become subject to

**10.5.1.4** A leasehold interest, management agreement or other possessory interest of a nongovernmental lessee, licensee or manager, which is operated as a private business. A public park shall always be public property within the meaning of this definition.

**10.5.1.3.1 "EXEMPT PUBLIC PROPERTY":** The following are "exempt public properties" (1) City of Miami, City Hall, 3500 Pan American Drive; (2) Miami Riverside Center, 444 SW 2<sup>nd</sup> Avenue; (3) City of Miami Fire Stations; (4) City of Miami Police Stations and (5) City of Miami NET (Neighborhood Enhancement Team) Offices. A homeless person's presence in the interior of an "exempt public property" is not a trespass within the meaning of 10.6.2.3.3 (11) where the homeless person's activities are reasonably related to the governmental business activities normally performed within these physical structures.

## **10.6 PROCEDURES:**

**10.6.1** An officer always has the right to approach any individual including a homeless person to allay any suspicions an officer may have about the individual, and ascertain that no criminal activity is occurring.

**10.6.2** At any time, and for any reason a law enforcement officer may approach a homeless person, who has not been observed engaging in any criminal conduct, to advise him or her of shelters, services, or assistance which are currently available. The officer may also call for the assistance of an outreach worker. The homeless person may or may not accept the advice or referral or he/she may even walk away from the area prior to the outreach worker/arriving. The rationale is to pro-actively have an outreach worker address the homeless person with referrals. If such an approach and advice occurs by a law enforcement officer, that officer shall complete a Field Information Card, or its electronic equivalent, with the facts of the incident, the referral and indicate at the top of the card "Homeless". The officer will turn the pink Field Information Card, or its electronic equivalent, in to his supervisor. The supervisor will check the Field Information Card for completeness, sign the top right hand corner with his name and IBM number and deliver to the Records Unit daily. In the case of a homeless person who refuses and who has refused assistance in the past thirty (30) days, a new Field Information Card, or its electronic equivalent, is not required to be completed for each encounter as long as the prior-filed Field Information Card, or its electronic equivalent, is update with the new date of contact with the homeless person. The pink Field Information Card, or its electronic equivalent, shall be filed with the Records Unit within the Miami Police Department.

**10.6.2.1** When a homeless person meets the criteria for involuntary examination under Florida Law (§394.463, Fla. Stat., as amended) "Baker Act" a law enforcement officer may, in his discretion, take the homeless person to the nearest receiving facility for involuntary examination. If the homeless person is taken to such a receiving facility for involuntary examination, a copy of the "Baker Act Forms" shall be filed with the nearest receiving facility. In addition, the officer shall complete an Field Information Card, or its electronic equivalent, The officer will turn the pink Field Information, or its electronic equivalent, card in to his supervisor. The supervisor will check the card for completeness, sign the top right hand corner with his name and IBM number and deliver the Field Information Card to the Records Unit daily.

**10.6.2.2** If a homeless person is observed violating a "Life Sustaining Conduct" misdemeanor, (as listed under 10.6.2.3.3) the law enforcement officer may exercise the following courses of conduct.

**10.6.2.3** If an officer determines that an individual is a homeless person and through his observation determines that a "Life Sustaining Conduct" misdemeanor (as listed under 10.6.2.3.3) is occurring in his presence, he must first check to see if there is an available shelter. The officer will contact the communications unit to ascertain if there is an available shelter. If there is an available shelter, the officer will offer the shelter to the homeless person, if the homeless person chooses shelter rather than arrest. An Outreach Team will respond to transport the homeless person to the shelter. If the Outreach Team (if available) is unavailable the law enforcement officer will transport the homeless person. If the homeless person is transported to a shelter, the officer will complete a Field Information Card, or its electronic equivalent, with the facts of the incident and indicate at the top of the card "Homeless". The officer will turn the pink Field Information Card in to his supervisor. The supervisor will check the card for completeness, sign the top right hand corner with his name and IBM number and deliver the Field Information Card, or its electronic equivalent, to the Records Unit daily.

**10.6.2.3.1** If the officer has probable cause to arrest the homeless person for a "Life Sustaining Conduct Misdemeanor," (as they are listed under 10.6.2.3.3) and there is an "available shelter" and the homeless person refuses the shelter, or if the sole available shelter at the time is a shelter from which the homeless person is barred from because of his own purposeful misconduct, criminal or otherwise, which occurred at that shelter, the officer may arrest the homeless person. The officer must document on the A form, beyond the probable cause for the arrest, the offer of shelter, the refusal by the homeless person to accept the "available shelter," the name of the shelter, and the word "Homeless" should be written at the top of the Arrest Affidavit. A copy of the Arrest Affidavit will be forwarded to the Miami Police Records Unit in conjunction with a pink Field Information Card, or its electronic equivalent.

**10.6.2.3.2** If the officer has probable cause to arrest the homeless person for a "Life Sustaining Conduct Misdemeanor" (as they are listed under 10.6.2.3.3), and there is no "available shelter," the officer shall not make an arrest nor take any other police action (warnings, etc). The officer will complete a Field Information Card, or its electronic equivalent, explaining the circumstances of the initial contact with the homeless person, the fact that there was no "available shelter," the fact that no arrest was made and the word "Homeless" should be written at the top of the card. The officer will turn the pink Field Information Card, or its electronic equivalent, in to his supervisor. The supervisor will check the Field Information Card for completeness, sign the top right hand corner with his name and IBM number and deliver the Field Information Card, or its electronic equivalent, to the Records Unit daily. However, if the homeless person described above is observed committing one of the below listed "life sustaining conduct" misdemeanors, and the life sustaining conduct misdemeanor causes imminent threat of physical injury to the homeless person or other person(s), the law enforcement officer must warn the homeless person to stop and if they refuse to do so, may arrest them regardless of whether there is an available shelter.

**10.6.2.3.3** "Life Sustaining Conduct Misdemeanors" are the following:

1. Being in park after hours. Current Provisions (38-3 1-13, F.S. 162.22)
2. Public nudity where necessary to carry on the daily necessities of life, such as bathing or responding to a call of nature. If the public nudity is done intentionally in plain view of others and the exposure or exhibition of the sexual organs, or nakedness was in a vulgar, indecent, lewd or lascivious manner, the law enforcement officer may arrest the person regardless of whether there is an available shelter. Moreover, in no circumstance shall public nudity be allowed for a call of nature if there

exists an open public restroom within one-quarter of a mile (1.320 feet) of the homeless person performing a call of nature. Current Provisions (F.S. 800.03, 37-1, 38-62)

3. Reserved
4. Obstructing passage on sidewalks, except that after one warning, no person or persons may lie on the sidewalk in a perpendicular fashion blocking the sidewalk, or may obstruct a sidewalk in such a way as to endanger other persons by requiring them to walk onto a street where but for the obstruction, such persons would otherwise have been able to safely walk on the sidewalk. Obstructing a street, road, or highway shall not be construed to be a "Life Sustaining Conduct Misdemeanor" within the meaning of this departmental order. Current Provisions 54-1 to 54-3, 37-3, FS 316.2045)
5. Vehicles, living or sleeping in. Current Provision (37-4)
6. Loitering in Restrooms. Current Provision (38-68)
7. Littering, except if within 300 feet of a usable trash receptacle, a law enforcement officer must warn the homeless person to stop and if they refuse to do so, may cite them regardless of whether there is an available shelter. Current Provision (FSS 403.314, 22-6, 38-17, 38-63)
8. Camping in parks. Current Provision. (38-71)
9. Use of facilities for other than intended purpose (e.g. sleeping on park bench). Current Provisions (38-54).
10. Reserved
11. Trespass on "public property" other than structure or conveyance. Current Provision. (F.S. 810.09 (1). Trespass on private property or in an "exempt public property" is not a "Life Sustaining Conduct Misdemeanor" within the meaning of this departmental order.

**10.6.2.3.4** Nothing in 10.6.2.3.3 listing the "Life Sustaining Conduct Misdemeanors" shall prevent an immediate arrest under 800.04 FS entitled "Lewd, lascivious, or indecent assault or act upon or in presence of a child" if the officer has probable cause to make such an arrest.

**10.6.2.3.5** Homeless Persons observed violating a misdemeanor, which is not classified above as "Life Sustaining Conduct Misdemeanors". Under this category the existence of an available shelter will not dictate whether an arrest is effected. However, officers can still refer homeless persons to the Outreach Team. A referral to an appropriate shelter rather than an arrest might be a better solution to minor misdemeanor arrests. In lieu of arrest the officer may warn the homeless person to stop the unlawful conduct, and refer the person to a shelter, or if the officer deems it appropriate, the officer may detain or arrest the homeless person. If the homeless person is arrested, the word "Homeless", should be printed on the top of the "A" form. A copy of which shall be filed with the Records Unit within the Miami Police Department. If the officer makes a decision not to make an arrest, and a referral is made, the officer shall complete a Field Information Card, or its electronic equivalent, with the facts of the incident, the referral and indicate at the top, "Homeless". The officer will turn the pink Field Information Card, or its electronic equivalent, in to his supervisor. The supervisor will check the card for completeness, sign the top right hand corner with his name and IBM number and deliver the Field Information Card, or its electronic equivalent, to the Records Unit daily.

## **10.7 PROPERTY:**

**10.7.1** The City shall respect the personal property of all homeless persons. Officers shall follow existing policies for taking custody of personal property. In no event shall any officer destroy any

personal property known to belong to a homeless person, or readily recognizable as property of a homeless person unless it is contaminated or otherwise poses a health hazard to an officer or to members of the public. Officers are not responsible for taking custody of mattresses.

**10.7.2** The disposition of personal property shall never prevent an officer from effectuating an arrest. However, the following safeguards shall be undertaken by the arresting officer to preserve the property of a homeless person, to the extent feasible:

**10.7.2.1** The arresting officer shall always attempt to secure personal items such as identification, medicines and eyeglasses and other small items of importance identified by the arrestee, which are not large or bulky, in accordance with the police department's existing procedures;

**10.7.2.2** The arresting officer shall ensure that large or bulky items (which are not contaminated or otherwise pose a health hazard to the officers or to members of the public) are not abandoned at the point of arrest, but rather secured by an outreach worker and maintained by existing outreach procedures. If an outreach worker is unavailable, then it must be secured by the arresting officer until an outreach worker becomes available to assume its maintenance in accordance with existing outreach procedures;

**10.7.3** In no event shall any law enforcement officer destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e. clothing and other belongings organized or packaged together in a way indicating it has been abandoned) except as permissible by law (in accordance with the department's operating procedures), or if the property is contaminated or otherwise poses a health hazard to officers or to members of the public.

**10.7.4** When a homeless person is placed in a shelter, large and bulky items, which are not contaminated or otherwise pose a health hazard or obvious safety issue, and that are not abandoned, shall be secured by an outreach worker and maintained in accordance with existing outreach procedures.



## BODY WORN CAMERA (BWC)

### Section

- 26.1 Policy
- 26.2 Organization
- 26.3 Responsibilities
- 26.4 Procedures

**26.1 POLICY:** The use of a body worn camera (BWC) system will provide documentation of the interactions between City of Miami Police and Detention Officers and the public by video recording evidence of actions, conditions and statements that may be used by judicial, internal review, or by the public through a formal public records request. The primary use of the BWC is to enhance officer safety, public safety, and promote accountability and transparency. The equipment will allow the Department to document statements and events during the course of an incident, enhance the police officer's ability to document and review statements and actions for internal reporting and preserve visual and audio information. The Department recognizes that the BWC will not capture exactly what an officer sees and/or hears or what an officer senses or experiences. Footage captured by BWCs is only a portion of the encounters between officer and individuals. The Department acknowledges that an officer's recollection of specific details may be different from what is captured by the BWC. Although the BWCs do not capture an officer's full knowledge of any particular situation, they are a valuable officer tool to capture and preserve data. **(CALEA 41.3.8 a)**

**26.2 ORGANIZATION:** This policy shall be applicable to all police and detention officers. The Chief of Police will decide which member will be issued a BWC. The issuance of BWC equipment, data access, and maintenance will be handled by the Body Worn Camera Detail.

**26.3 RESPONSIBILITIES:** Any officers utilizing BWC equipment shall ensure the device is in working order prior to starting their tour of duty and shall activate the BWC at all times when they become involved in any official action, enforcement action, are in the custody of or transporting a detainee, or engage in any self-initiated interactions with citizens. In addition to the officer, Supervisors will be held strictly accountable, and subject to disciplinary action, for any failure on a subordinate's part to adhere to this policy. Violation of this policy will be addressed in accordance with progressive discipline. **(CALEA 41.3.8 b)**

### **26.4 PROCEDURES:**

**26.4.1 PRE-SHIFT INSPECTION:** Prior to each shift, officers assigned a BWC will ensure the BWC is adequately charged. Furthermore, officers will inspect their BWC equipment to ensure the device is in good working order, has no visible damage and is their assigned BWC. Any visible damage or concerns about the functionality of any BWC equipment will be brought to the attention of the officer's immediate supervisor without delay. If an officer's BWC is lost or discovered to be missing from its last docked location, the officer shall notify their supervisor and the Body Worn Camera Detail immediately. **(CALEA 41.3.8 e)**

## **26.4.2 AUDIO / VIDEO RECORDING:**

**26.4.2.1 Wearing Position and Use of the BWC:** BWCs shall be worn on the chest using the mounting equipment issued from the Body Worn Camera Detail. BWCs shall not be mounted on another object or another position on the officer's body. Officers shall only wear and operate their assigned BWCs.

### **26.4.2.2 Use of and Recording with the BWC: (CALEA 41.3.8 b)**

- a) An officer assigned a BWC must wear it in the On/Standby Mode at all times when on duty while in uniform and operating a police vehicle to or from work/home or court, while performing or likely to perform enforcement duties, or while performing an extra-duty detail/ special event. Officers shall be in uniform while operating a marked police vehicle to and from work, extra-duty detail/special event, or other function where the officer would otherwise be expected to report in police uniform or is travelling from a function where the officer had worked in uniform. Officers shall turn off BWC equipment while in bathrooms, however, will resume On/Standby Mode upon exiting bathroom facilities
- b) BWCs are considered a tool in the performance of law enforcement duties. Officers assigned a BWC shall not erase, alter, modify, destroy, abuse, tamper with, or intentionally interfere with the capabilities of the BWC equipment, including any audio/video recordings or the device.
- c) The Department recognizes that officer safety is paramount. Officers are directed to activate their BWC immediately upon being dispatched to a call for service or engaging in a self-initiated call for service. In the event that an Officer cannot safely begin recording at the time of dispatch or upon initiating a self-directed call for service the Officer must start recording as soon as it is safe and practical to do so. If multiple officers are on scene with a BWC, all officers with a BWC will record. Likewise, if multiple Detention Officers are transporting detainees, all Detention Officers will activate the record mode during this task.
- d) Officers with a BWC shall activate their BWC for all investigative or enforcement contacts including, but not limited to:
  - 1. Responding to calls for service in an emergency mode
  - 2. All vehicle pursuits, or foot pursuits
  - 3. All traffic stops including the investigation of a vehicle and vehicle occupants
  - 4. All searches including, but not limited to, people, vehicles, and buildings
  - 5. All requests for a consent to search without a warrant, including searches of persons, buildings, or vehicles
  - 6. All requests for searches and deployments of drug detection canines involving vehicles, when practical
  - 7. All arrests and/or citations.

8. While in custody of a detainee
  9. Statements from victims/witnesses
  10. Any incident upon the direction of a supervisor, at the request of another police officer, or on any incident where the officer deems it appropriate to activate the body camera
  11. Officers shall only use the Department issued BWC equipment to record official Departmental activities
  12. Any other legitimate law enforcement contacts, including contacts made while working the front desk at any departmental facilities.
- e) Officers assigned a BWC and with a detainee will record until all paperwork associated with the arrest/incident is completed and the detainee is placed inside of a Prisoner Interview Area in the custody of detention officers, or if a detention officer in the field takes custody of the detainee and the completed paperwork associated with the arrest and the officer proceeds to clear the location. Detention Officers shall initiate recording immediately upon taking custody of a detainee in the field, or immediately prior to leaving the Prisoner Interview Area with a detainee and shall continue recording until arrival at the Miami Dade Corrections facilities, or other destination where detainee(s) are delivered into the custody of another authority.
- f) Officers will continue to record while at the Miami Dade Correctional facility unless directed by a Miami Police supervisor to cease recording.
- g) Officers will cease recording upon entering any court facility unless the officer is responding to a call for service at the facility, or law enforcement action becomes necessary while at the facility. In the event that the officer is responding to a call for service at the facility the BWC recording shall continue until the officer concludes the call, or the officer is directed by a Miami Police supervisor to cease recording.
- h) Once a BWC is recording, officers must continue to record until their involvement in the event ceases and they leave the scene.
- i) While **not required** by policy or state law, officers assigned a BWC may find it valuable to inform other parties that they are being recorded. This has proven to be influential in garnering cooperation and has been shown to reduce incidents of use of force.
- j) A BWC is not specifically designed to log evidence or to be used for any situation where fine detail and resolution is necessary. Officers are encouraged, however, to use their assigned BWC to record crime scenes prior to the arrival of crime scene technicians or forensic investigators, especially if the scene may change or be compromised.
- k) For efficiency, officers assigned a BWC will have the ability to properly ID, title, categorize and view via the smartphone application "Axon View", or an assigned iPod, prior to uploading to the evidence management system (EMS). Officers that are unable to properly ID, title, categorize, or view videos will have the ability to do so via the Evidence.com after uploading videos into the EMS.

- l) Officers will activate or deactivate the BWC pursuant to this Department Order and not upon the request of a citizen.
- m) **EXTRA-DUTY DETAILS** (Extra-Duty Details/Special Events): An officer assigned a BWC must wear it in the On/Standby Mode at all times when working an extra duty detail or special event. Officers are to initiate recording while working extra-duty/special event assignments and take any action(s) that would otherwise require the activation of the BWC as if the officer was on-duty. When the BWC activation becomes necessary, the officer is to ID, title and categorize the incident immediately upon the completion of the incident if the officer is assigned an iPod. Officers not assigned an iPod shall dock the BWC upon their next regular scheduled work day and ID, title and categorize the incident at that time. The officer must notify a supervisor working the same extra duty detail or special event if one is assigned (to include Special Events Supervisors) if the officer is involved in an arrest, response to resistance, injury to an officer or other, including arrestee/detainee, vehicle pursuit (even if it was cancelled/concluded), a complaint against the officer is made, or any serious incident. The supervisor will determine if there is a need for the officer to dock and upload the BWC prior to the officer's next regular scheduled work day. If the officer is working an extra-duty detail/special event assignment where there is no supervisor assigned, the officer must notify Communications and request that an on-duty supervisor be notified. The supervisor will determine if there is an immediate need for the officer to dock and upload the BWC prior to the officer's next regular scheduled work day. Officer(s) that are directed by a supervisor to immediately dock the BWC will be compensated accordingly. Officers shall be in uniform while operating a marked police vehicle to and from an extra-duty detail/special event assignment.
- n) **PORTAL to PORTAL TRAVEL:** An officer operating a city vehicle and who is assigned a BWC must wear it in the On/Standby Mode when traveling portal to portal in uniform and is to initiate recording if they take any action(s) that would otherwise require the activation of the BWC if the officer was on-duty. When the BWC activation becomes necessary, the officer is to dock the BWC, ID, title, and categorize the video upon returning to their next regular scheduled work day. The officer must notify Communications and request that an on-duty supervisor be notified if the officer becomes involved in an arrest, response to resistance, injury to an officer or other including arrestee/detainee, vehicle pursuit (even if it was cancelled/concluded), a complaint against the officer is made, or is involved in a serious incident. The supervisor will determine if there is an immediate need for the officer to dock and upload the BWC prior to the officer's next regular scheduled work day. Officer(s) that are directed by a supervisor to immediately dock the BWC will be compensated accordingly. Officers shall be in uniform while operating a marked police vehicle to and from work, extra-duty detail/special event, or other function where the officer would otherwise be expected to report in police uniform or is traveling from a function where the officer had worked in uniform.

**26.4.3 EXCEPTIONS TO RECORDING:** While it is the intent of this policy to require the BWC recording of any incident, interaction, investigation or enforcement contact not be interrupted prior to its conclusion and the officer clears the scene, or has completed the transport of a detainee, the Department recognizes that there will be times when private conversation prior to the conclusion of the incident may be necessary. An example of such instances when private conversation may be necessary is during strategy discussions with a supervisor or other officer. Prior to such discussion Officers may activate the Mute function on the BWC. Prior to activating the Mute function on the BWC the officer is to indicate the reason for muting the video. Officers shall not activate the Mute function while actively engaged or interacting with a member of the

public, suspect or detainee. Officers shall not deactivate the recording unless specifically directed to do so by a supervisor. In such instance the officer is to indicate the supervisor's name who authorized deactivating the recording prior to doing so.

**26.4.3.1** Supervisors may authorize an officer to deactivate BWCs during non-enforcement activities such as:

**(CALEA 41.3.8 b)**

- a) Traffic control at fires, crime scenes, or crash scenes when the officer's likelihood of being involved in enforcement activities is low.
- b) Lengthy hospital stays awaiting medical clearance (unless enforcement actions are likely, the likelihood of additional criminal activity or escape attempt is high, the suspect is making voluntary statements, or the officer is gathering additional evidence, e.g., DUI blood draws).
- c) Officers shall make a verbal notation on the recording anytime they are directed by a supervisor to stop a recording. The verbal notation must include the reason why the officer is stopping the recording and the name of the supervisor who authorized the halting of the recording. Officers shall note on their worksheet the number of videos associated with each case due to the stops and restarts during a call. (e.g., Officer is directed by a supervisor to stop the BWC and restarts the BWC prior to clearing the call. In this particular circumstance the officer will generate two videos on the one call, therefore, the worksheet entry for the call shall reflect "2 BWC Videos".)
- d) When in close proximity to a suspected explosive device or package. Officers assigned to a perimeter will have their BWC active and recording unless directed by a supervisor to stop recording.

**26.4.3.2 PROHIBITED RECORDINGS:** In keeping with the Department's core values of respect and integrity, officers assigned a BWC will adhere to the following guidelines: **(CALEA 41.3.8 b)**.

- 1. BWCs will not be activated in a place where a reasonable expectation of privacy exists, such as dressing rooms, locker rooms and restrooms unless while handling a legitimate call in one of these locations.
- 2. BWCs shall not be used to record a strip search or a body cavity search conducted in accordance with Florida Statutes 901.211.
- 3. BWCs will not be intentionally activated to record conversations of fellow officers without their knowledge during routine and non-enforcement activities.
- 4. BWCs will not be utilized to surreptitiously record conversations of the public and/or other members of the Department.
- 5. Officers utilizing a BWC will not knowingly record undercover officers or confidential informants.
- 6. BWCs will not be utilized to record any personal activity.

7. BWCs will not be utilized to record roll call activities.
8. BWCs will not be utilized in DUI processing rooms where a Breath Testing Instrument is located. (Due to radio frequency interference)

#### **26.4.4 CRITICAL INCIDENT PROTOCOL:**

**26.4.4.1** A critical incident for the purpose of this departmental order is any police action or activity that directly or indirectly results in serious bodily injury or death to an officer and/or a citizen.

**26.4.4.2** In the event of a critical incident, an officer assigned a BWC shall refrain from viewing the recorded data until the investigative entity responsible for the investigation arrives on scene and authorizes the officer to do so. This section does not prohibit officers in critical incidents with ongoing exigency from viewing BWC recordings that may aid the present investigation (e.g., suspect descriptions, suspect vehicles, direction of travel). **(CALEA 41.3.8 c)**

**26.4.4.3** If there are BWCs in use during a critical incident, a police supervisor or an investigator assigned to the Internal Affairs Section and not involved in the actual critical incident will immediately take physical custody of any BWC's that may have captured the incident. The investigator will contact the Body Worn Camera Detail to have an officer respond and facilitate with the video uploaded from the BWC into the evidence management system (EMS) without delay and provide copies as authorized.

**26.4.4.4** Officers will be able to review video before giving any statements. **(CALEA 41.3.8 c)**

#### **26.4.5 DATA UPLOADING AND VIDEO CATEGORIZATION:**

**26.4.5.1** Prior to docking their BWC, officers on an FTO rotational phase shall use the smart phone application, issued iPod, or computer program to assign the appropriate ID, title, and category to each individual recording. For efficiency, officers are to ID and categorize their videos throughout their shift using the mobile application, "Axon View", iPod, or computer program. Instructions for identifying "ID", titling and categorizing each individual recording follow: **(CALEA 41.3.8 d)**

a) ID field: Enter the CAD number (when applicable).

1. Officers shall use the following formats in the ID field:  
170103123456

b) Title field:

1. Provide final signal and FTOs IBM (e.g., signal 55, with FTO's IBM).

c) Category fields:

There are 20 category choices for each individual recording. If multiple categories apply to an event, officers shall select the category with the highest retention period available to them.

## 1. Recording Management Categories

a. The following recording categories are to be used.

Categories	Retention Duration
1 Baker Act	180 Days
2 Crime Stoppers Tip	90 Days
3 Damage to MPD-City Property	1 Year
4 Death Investigations	100 anniversary years after crime was committed
5 Detention Officer Transport (Incident)	1 Year
6 Detention Officer Transport (No Incident)	90 Days
7 DUI Investigation	3 Years
8 Felony Investigation	5 Years
9 Field Contact /Traffic Stop (No Citation)	90 Days
10 Homeless Encounter	1 Year
11 IA Case (Closed)	5 years after complaint disposition
12 IA Case (Open Pending)	100 Years (BWC access restricted)
13 Misdemeanor Investigation	3 Years
14 Police Involved Shooting	100 anniversary years after date of incident
15 Response to Resistance	5 Years
16 Test/ Training Videos	90 Days
17 Traffic Crash Investigations	5 Years
18 Traffic Stops (Citation Issued)	180 Days
19 Uncategorized	180 Days
20 Vehicle Pursuits	5 Years

2. At the end of each shift, all officers assigned a BWC will dock their camera and retrieve the camera previously left charging in the dock before heading home. All officers are responsible for ensuring all video evidence that is uploaded has the proper ID, title, and category before the end of their workday. Officers working an extra-duty detail, or special events detail will dock their camera on their next regular work day, **unless ordered by a supervisor to do so sooner due to an incident that occurred during the officers extra-duty detail or portal to portal travel.** Any evidence recorded by a back-up officer shall be ID'd and categorized the same as the primary officer, to include signal, case number, disposition, etc. **(CALEA 41.3.8 g)**

3. Upon upload to the EMS, the BWC will be cleared of existing data and ready for use during the officer's next shift.

**26.4.5.2** Officers on Solo 1 phase and beyond are not required to categorize or ID each video prior to docking their BWCs if docking occurs within 8 hours from the end of their scheduled shift as CAD information will be automatically uploaded and used to categorize and ID the individual

videos recorded during that shift. However, officers in this status are to afterwards review the entries in Evidence.com and validate that each of the videos previously uploaded were correctly categorized and ID'd by the system. In the event that the information on any given video is not correct, officers must manually make the necessary corrections. Officers are encouraged to use the Title field to enter brief descriptions of the incident recorded, including final signal and outcome as this information as it will serve as a reminder and assist officer in locating a particular video in the future. Any officer in Solo 1 phase and beyond who docks the BWC after 8 hours from the end of their scheduled shift shall manually input the information as required in 6.4.5.1.

**26.4.6 REPORTING / DOCUMENTATION (Self-Reporting and Supervisor Compliance Audit Forms):**

**26.4.6.1** The use of a BWC will be documented at the end of the paragraph of an incident or supplemental report.

**26.4.6.2** When a BWC records an incident resulting in either an arrest or citation, the use of the BWC will be documented in the citation and/or the arrest report narrative. If a citation is issued, the words "BWC utilized." will be written in the lower right hand corner of a paper citation or typed in the arrest form. The officer's worksheet will also reflect "BWC utilized."

**26.4.6.3** Any officer who fails to activate their BWC and or record an incident as directed by this policy is to complete and submit a BWC Self-Reporting Form to their immediate supervisor explaining the circumstances prior to the officer's end of shift. The supervisor will review the report and determine if the failure to record was warranted. In the event that the supervisor determines that the failure to activate the BWC in accordance with policy is not justified, the supervisor shall initiate the appropriate disciplinary action in accordance with progressive discipline and document action taken on the form. The form shall be submitted through channels to the Field Operations Division Chief with a copy submitted to the Body Worn Camera Detail.

**26.4.7 DEPARTMENT REVIEW / TRAINING:**

**26.4.7.1** All recordings made with a BWC are the property of the Miami Police Department.

**26.4.7.2** Recordings may be reviewed: **(CALEA 41.3.8 c)**

- a) By a Department officer to ensure a BWC system is working properly.
- b) By a police officer viewing their individually assigned recordings to assist with writing a report, supplement, citation, memorandum or court case preparation.
- c) By authorized persons for the purpose of reviewing evidence and processing records requests.



- d) By a supervisor to investigate a specific act or allegation by another officer or by a member of the public. However, recorded data shall not be randomly viewed by supervisors for the sole purpose of enforcing policy violations, except as directed in 6.5.2 Audits.
- e) The Chief of Police or designee may order periodic integrity inspections of recordings to be conducted by the Internal Affairs Section.
- f) By authorized Department personnel participating in an official investigation, such as a citizen complaint, administrative inquiry or criminal investigation.
- g) By others with permission of a supervisor if they are participating in an official investigation.

**26.4.7.3** BWC recordings may be used for the purposes of training. Officers aware of BWC recordings that may serve as a training aid for other officers should notify a supervisor who will review the recording to determine its feasibility as a training aid.

**26.4.7.4** BWC recordings will never be used with the intent of belittling, ridiculing or embarrassing any officer of the Department, notwithstanding the potential use of BWC recordings in disciplinary matters.

**26.4.7.5** Supervisory personnel shall review all BWC video relevant to a serious incident involving an officer, including any response to resistance, vehicle pursuit, officer involved crash, firearm discharge, complaint against officer(s), injury to officer or others, etc., prior to completing any supervisory report of the incident.

**26.4.7.6 Discovery of Potential Misconduct during Authorized Review:**

1. Members reviewing recordings should remain focused on the incident captured in the BWC and should review only those recordings relevant to the investigative scope. If a member discovers potential misconduct during any review of the BWC, the member shall report the potential misconduct to a superior officer. The superior officer shall adhere to the provisions of Departmental Order 2. Nothing in this procedure prohibits addressing Department Order violations.

**26.4.8 DATA PRIVACY / RETENTION OF RECORDINGS / RECORDS REQUESTS:**

**26.4.8.1** All digital media that is captured with a BWC is the property of and will be retained by the Miami Police Department for a minimum of 90 days following the date it is recorded. Captured video may be retained for longer periods in the event the video is the subject of a litigation hold, a criminal case, part of discovery, etc. **(CALEA 41.3.8 d)**

**26.4.8.2** Unauthorized accessing, copying, or releasing captured video without the approval of the Chief of Police or designee is strictly prohibited. Officers are prohibited from making copies of a BWC audio/video recording by using another recording device such as a cell phone.

**26.4.8.3** With the proper EMS permission level, recordings may be duplicated or shared with criminal justice agencies or when otherwise authorized by the Chief of Police or designee.

**26.4.8.4** Officers will not allow citizens to review video captured by a BWC unless there is an investigative reason to do so and such viewing has been approved by a supervisor. Officers shall advise citizens that they may request a copy of the recording through the public records process.

**26.4.8.5** The release of video requested through a public records request will be handled in accordance with existing policy. The City of Miami Police Department will follow the Public Records Law Chapter 119. Reproduction fees for duplication of recordings will be established by the City of Miami Records Unit.

**26.4.8.6** Prior to the release of any BWC recording to the public, the Body Worn Camera Detail will ensure that proper redactions have been made in accordance with state law.

**26.4.8.7** Accidental recordings may be deleted prior to the standard 90-day retention period only after a Redline Memorandum is submitted through the officer's chain of command and approved by the officer's Division Chief. Approved Redline Memorandum will then be forwarded to the Body Worn Camera Detail for deletion.

**26.4.8.7.1** If a BWC accidentally or inadvertently makes a prohibited recording as described above, the member will submit a memorandum through the chain of command specifying the date, time, location and a summary of the unintentionally recorded event. This memorandum, once approved by the officer's Division Chief shall be forwarded to the Commanding Officer of the Body Worn Camera Detail for appropriate action.

## **26.5 GENERAL GUIDELINES:**

**26.5.1 TRAINING:** Officers will receive prescribed training prior to being assigned a BWC. Officers will also go through a refresher course for BWC as needed to cover any new changes, affecting the use of the BWC. **(CALEA 41.3.8 f)**

**26.5.2 AUDITS:** First-line supervisors will be responsible for conducting at a minimum one compliance audit of one full incident a month per subordinate officer to verify officer compliance with policy, BWC performance and usage. Compliance audit efforts, including any violations detected and disciplinary action taken shall be documented on BWC Supervisor Compliance Audit Form located in SharePoint (see 26.4.6) and submitted for the Lieutenant's approval via SharePoint. Additionally, the Body Worn Camera Detail will conduct compliance audits as determined by the Field Operations Division Chief. **(CALEA 41.3.8 g)**

**26.5.3 POLICY REVIEW:** BWC policies will be reviewed yearly or when a major change is made related to BWC.

## **26.5.4 CARE AND EQUIPMENT:**

- a) The only BWCs authorized by the City of Miami Police Department is the Department-issued BWC. Personal video recording devices are prohibited.
- b) All BWC's and related equipment will be issued to individual officers by the Body Worn Camera Detail.
- c) A record of inventory will be maintained by the Body Worn Camera Detail.

- d) Only officers who have received the prescribed training will be assigned or permitted to wear a BWC.
- e) Officers assigned a BWC are responsible for the proper care of the equipment.
- f) Officers will not deface or alter BWC. This includes, but is not limited to painting, engraving, and any other permanent markings.
- g) Officers are responsible for turning in BWCs to the Body Worn Camera Detail when transferring to a unit not requiring a BWC.

**26.6 REPAIR / REPLACEMENT: (CALEA 41.3.8 e)**

**26.6.1** Replacement BWC equipment will be available in the Body Worn Camera Detail.

**26.6.2** Any BWC equipment, including mounts, cameras, cords, iPods, etc., that is lost, stolen, or damaged will be immediately reported to the officer's supervisor and a Request for Replacement of Lost or Damaged Equipment Form will be generated and sent through the officer's chain of command detailing the circumstances leading to the damage in a Lost or Damage Form per D.O.'s. A copy of the lost or damaged equipment form with a lieutenant's or command staff member's signature will be taken to the Body Worn Camera Detail for equipment replacement. Officers shall be financially responsible for replacing equipment lost or damaged as a result of the officer's carelessness.

**26.6.3** BWC replacement parts and/or systems are available by contacting the Body Worn Camera Detail, Monday thru Friday from 0600 hours to 1600 hours. The proper documentation, outlined above, must have been submitted along with a copy made available for review by the Body Worn Camera Detail Commander or designee before replacement parts or systems will be issued.



**CITY OF MIAMI  
DOCUMENT ROUTING FORM**

1183

**ORIGINATING DEPARTMENT:** Human Services  
**DEPT. CONTACT PERSON:** William Porro **EXT.** \_\_\_\_\_  
**NAME OF OTHER CONTRACTUAL PARTY/ENTITY:** APM 1-19

**IS THIS AGREEMENT A RESULT OF A COMPETITIVE PROCUREMENT PROCESS?** ☐ YES ☐ NO  
**TOTAL CONTRACT AMOUNT: \$** \_\_\_\_\_ **FUNDING INVOLVED?** ☐ YES ☐ NO

**TYPE OF AGREEMENT:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> MANAGEMENT AGREEMENT | <input type="checkbox"/> PUBLIC WORKS AGREEMENT     |
| <input type="checkbox"/> PROFESSIONAL SERVICES AGREEMENT | <input type="checkbox"/> MAINTENANCE AGREEMENT      |
| <input type="checkbox"/> GRANT AGREEMENT                 | <input type="checkbox"/> INTER-LOCAL AGREEMENT      |
| <input type="checkbox"/> EXPERT CONSULTANT AGREEMENT     | <input type="checkbox"/> LEASE AGREEMENT            |
| <input type="checkbox"/> LICENSE AGREEMENT               | <input type="checkbox"/> PURCHASE OR SALE AGREEMENT |

**OTHER: (PLEASE SPECIFY)** \_\_\_\_\_

**PURPOSE OF ITEM (BRIEF SUMMARY):** \_\_\_\_\_

**COMMISSION APPROVAL DATE:** \_\_\_\_/\_\_\_\_/\_\_\_\_ **FILE ID:** \_\_\_\_\_ **ENACTMENT NO.:** \_\_\_\_\_

**IF THIS DOES NOT REQUIRE COMMISSION APPROVAL, PLEASE EXPLAIN:** \_\_\_\_\_

ROUTING INFORMATION	Date	PLEASE PRINT AND SIGN
APPROVAL BY DEPARTMENTAL DIRECTOR		PRINT: William Porro SIGNATURE: <i>William Porro</i>
SUBMITTED TO RISK MANAGEMENT		PRINT: ANN-MARIE SHARPE SIGNATURE: <i>N/A</i>
SUBMITTED TO CITY ATTORNEY Matter ID: 21-1818 Approved as to legal form: <i>Domini J. Gibbs</i>	8/26/2021	PRINT: VICTORIA MENDEZ SIGNATURE: <i>N/A</i>
APPROVAL BY ASSISTANT CITY MANAGER	<i>8/27/21</i>	PRINT: <i>Natasha Colebrook</i> SIGNATURE: <i>Williams</i>
RECEIVED BY CITY MANAGER	<i>8/30/21</i>	PRINT: ART NORIEGA SIGNATURE: <i>[Signature]</i>
1) ONE ORIGINAL TO CITY CLERK, 2) ONE COPY TO CITY ATTORNEY'S OFFICE, 3) REMAINING ORIGINAL(S) TO ORIGINATING DEPARTMENT		PRINT: SIGNATURE:  PRINT: SIGNATURE:  PRINT: SIGNATURE:

**PLEASE ATTACH THIS ROUTING FORM TO ALL DOCUMENTS THAT REQUIRE  
EXECUTION BY THE CITY MANAGER**



POLICY NUMBER:

APM- 1-19

DATE:

ISSUED BY:

Arthur Noriega, V.  
City Manager/Designee

  
SIGNATURE

# CITY OF MIAMI



## ADMINISTRATIVE POLICY

### REVISIONS

REVISED  
SECTION  
Created  
Revised

DATE OF  
REVISION

**SUBJECT: TREATMENT OF HOMELESS PERSONS' PROPERTY**

### Purpose

The purpose of this policy is to establish a standard practice for the handling, temporary storage, and disposition of property belonging to homeless persons.

### Scope

This Administrative Policy shall apply to all City employees, whether probationary, classified, unclassified, executive, temporary, or part-time, except employees of the Miami Police Department shall be bound by and follow the procedures set forth in Departmental Order 11 Chapter 10, or any existing Departmental Order addressing the treatment of homeless persons' property, to the extent there is any conflict between this Administrative Policy and any Departmental Order.

### Definitions

- A. "Contaminated or Dangerous Items" are those items that present a hazard to the health and safety of City Personnel or the public. These items include, but are not limited to, hazardous materials, flammable materials (e.g., propane tanks), fabric contaminated with human or animal waste, fabric contaminated with flammable substances (e.g., oil or petroleum products, wet fabric (mold hazard), etc.
- B. "Homeless Person" shall mean a person who lacks a fixed, regular, and adequate night-time residence and has a primary night-time residency that is: (a) supervised publicly or privately operated shelter designed to provide a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term "homeless person" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a state law. 42 U.S.C. §11301, et seq. (1994).

- C. "Homeless Person's Property" or "Homeless Property" shall mean personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e., bedding or clothing and other belongings organized or packaged together in a way indicating it has not been abandoned).
- 

## **Procedures**

### **I. General Procedures**

1. City Personnel will attempt to secure personal items such as identification, medicines and eyeglasses and other small items of importance identified by the Homeless Person or readily identifiable as intimate personal property.
2. Notwithstanding anything herein:
  - a. Homeless Property that is contaminated or otherwise poses a health or safety concern to City Personnel or to members of the public may be disposed of.
  - b. The City is not responsible for taking custody of mattresses, upholstered furniture, or other bulky items on public property, and may dispose of those items.
  - c. Nothing herein prevents the disposal of items reasonably believed to be refuse.
  - d. The City may prohibit the presence of unattended property in specified areas where the presence of such unattended property poses a threat or risk to the public health or safety.

### **II. Tagged/Labeled Homeless Persons' Property:**

1. In order to aid the City in its ability to readily identify and handle the property of homeless persons, the City requires that all homeless individuals who wish to identify their personal property place a tag or label with their name and contact information (telephone and/or email) on the outside of any such property, such that City employees can easily identify the property as belonging to a specific individual and will have a means of contacting that individual with regard to any actions taken as to that property.
2. Whenever a City employee encounters unattended but tagged/labeled homeless persons' property, the following procedure shall be employed:
  - a. Any personal items such as identification, medicines, eyeglasses, and other small items of importance readily identifiable as intimate personal property will be collected and held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed. An Inventory Storage Form will be completed by City personnel, and a copy of that form will be provided to the Homeless Person by e-mail (if provided/available).



- b. Any items that are contaminated or otherwise pose a health hazard or obvious safety issue will be disposed of according to this policy.
- c. Any Homeless Property that does not appear to be contaminated or otherwise pose a health hazard or obvious safety issue, such as identification, clothing, bedding, photographs, personal papers, and keepsakes, will be collected and held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed. An Inventory Storage Form will be completed by City personnel, and a copy of that form will be provided to the Homeless Person by e-mail (if provided/available).
- d. Whenever possible, City personnel will photograph the homeless property prior to taking action.
- e. Following any such action described above, the City will attempt to contact the homeless individual identified on that tag/label to inform them of the disposition of their unattended property, and to notify them of any stored property and the method through which the homeless person can claim that property. Three (3) attempts at contact will be made. The City shall document any such attempts.

**III. When a Homeless Person Accepts Voluntary Placement in Shelter:**

1. When a Homeless Person accepts placement in a shelter, City personnel will request the Homeless Person to secure the personal items that they wish to take to shelter with them. These items should include, at a minimum, any identification, medication, eyeglasses, and electronics in the homeless person's possession.
2. City personnel will request that the Homeless Person identify any of their remaining Homeless Property that they are willing to voluntarily discard. When a homeless person voluntarily agrees to discard property, they will be asked to sign a Waiver for Voluntary Disposal of Property Form.
3. Any remaining Homeless Property that cannot be taken to the shelter, which is not contaminated or does not otherwise pose a health hazard or obvious safety issue, will be documented, secured, and stored by City personnel. The Homeless Person will be required to sign an Inventory Storage Form, and a copy of that form will be provided to the Homeless Person. Any such stored property will be held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed.
4. Whenever possible, City personnel will photograph the homeless property prior to taking action.

**IV. During a Cleanup Operation:**

1. All Cleanup operation will be coordinated by the Department of Human Services' Homeless Outreach Team.
2. City personnel will place notices of Cleanup operation, at least seventy-two (72) hours prior to the cleaning date. The notice will inform individuals of the date of cleaning and will provide the phone number

and address of the Veterans Affairs/Homeless Assistance Program Division in the Department of Human Services, where any collected Homeless Property can be retrieved.

3. Whenever possible, City personnel will photograph the Homeless Property prior to the Cleanup operation.
4. Cleanup operation when the Homeless Person is presented:
  - a. City Personnel will inform the Homeless Person that the Cleanup is about to commence and request that they relocate themselves with their Homeless Property. These items should include, at a minimum, any identification, medication, eyeglasses, and electronics in the homeless person's possession.
  - b. City personnel will request that the Homeless Person identify any of their remaining Homeless Property that they are willing to voluntarily discard. When a homeless person voluntarily agrees to discard property, they will be asked to sign a Waiver for Voluntary Disposal of Property Form.
  - c. Any remaining Homeless Property that cannot be left on the site, which is not contaminated or does not otherwise pose a health hazard or obvious safety issue, shall be documented, secured, and stored by City personnel. The Homeless Person will be required to sign an Inventory Storage Form, and a copy of that form will be provided to the Homeless Person. Any such property will be held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed.
5. Cleanup operation when the Homeless Person is not present:
  - a. Any personal items such as identification, medicines, eyeglasses, and other small items of importance readily identifiable as intimate personal property will be collected and held for a period of ninety (90) days, after which the City will dispose of the property unclaimed. An inventory Storage Form will be completed by City personnel.
  - b. Any items that are contaminated or otherwise pose a health hazard or obvious safety issue will be disposed of according to this policy.
  - c. Any Homeless Property that does not appear to be contaminated or otherwise pose a health hazard or obvious safety issue, such as identification, clothing, bedding, photographs, personal papers, and keepsakes, will be collected and held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed. An Inventory Storage Form will be completed by City personnel.
  - d. If the property was tagged/labeled, the City will attempt to contact the individual identified as the property owner in the manner set forth in section II, above. If the property was not tagged/labelled, the City will post a notice at the location of the property that their property was either discarded or stored, and informing the reader of how to contact the City to discuss that property.



**V. Procedures for Unattended and Unidentified (Untagged/Unlabeled) Homeless Property:**

1. The Department of Human Service specifically the City's Homeless Outreach Team shall be contacted prior to City personnel taking action with respect to Homeless Property.
2. Any personal items such as identification, medicines, eyeglasses, and other small items of importance readily identifiable as intimate personal property will be collected and held for a period of ninety (90) days, after which the City will dispose of the property if unclaimed. An Inventory Storage Form will be completed by City personnel.
3. Any items that are contaminated or otherwise pose a health hazard or obvious safety issue will be disposed of according to this policy.
4. Any Homeless Property that does not appear to be contaminated or otherwise pose a health hazard or obvious safety issue, such as identification, clothing, bedding, photographs, personal papers, and keepsakes, will be collected and held for a period of ninety (90) days. An Inventory Storage Form will be completed by City personnel.

**VI. Storage Procedures**

1. The City homeless property storage site will be accessible by public transit or other means accessible to persons with low income.
  2. When Homeless Property is collected by City personnel it should be labeled with the date of its removal and location from which it was removed to assist with its being reclaimed by its owners. Bags may be used to keep items collected from the same sites together.
-

POLICY NUMBER:

APM- 2 - 92

DATE:  
March 3, 2003

ISSUED BY:  
Linda Haskins  
City Manager/Designee



SIGNATURE

# CITY OF MIAMI



## ADMINISTRATIVE POLICY

### REVISIONS

REVISED SECTION	DATE OF REVISION
Created	07/22/92
Revised	06/18/97
Revised	03/03/03

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SUBJECT: ESTABLISHING ADMINISTRATIVE POLICIES

**PURPOSE:** To amend the guidelines and procedures for creating new or revising prevailing administrative policies.

Effective this date, this administrative policy will supersede LMP-2-92 and all previous directives relating to the establishment and/or revision of administrative and/or labor/ management policies.

### The Policy will be as Follows:

- I All departments creating new or revising prevailing administrative policies shall submit the proposed policy draft to the Department of Employee Relations, Labor Relations Division.
- II The Office of Labor Relations will review the administrative policy for language and content and recommend changes, if necessary. Upon completion of their review, the proposed policy shall then be forwarded to the City Manager/Designee for final approval. Assignment of appropriate indexing and implementation date will be the responsibility of the Department of Employee Relations, Labor Relations Division.
- III The APM should include the following:
  - A Subject
  - B Purpose
  - C Policy in detail
- IV Form or exhibit, where applicable
- V Any policy submitted for review shall not conflict with any labor agreement provision, Civil Service Rule or any other Administrative Policy in effect.
- VI The Department of Employee Relations, Labor Relations Division will be responsible for dissemination of the approved APM to all departments.

Select Year: 2023 ▾ Go

## The 2023 Florida Statutes (including Special Session C)

### Title XL

#### REAL AND PERSONAL PROPERTY

### Chapter 705

#### LOST OR ABANDONED PROPERTY

### [View Entire Chapter](#)

#### CHAPTER 705

#### LOST OR ABANDONED PROPERTY

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#### **705.101 Definitions.—**As used in this chapter:

(1) “Abandoned property” means all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels as defined in s. 823.11 and vessels declared a public nuisance pursuant to s. 327.73(1)(aa).

(2) “Law enforcement officer” means any person who is elected, appointed, or employed full time by any sheriff, any municipality, or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

(3) “Local government” means the board of county commissioners of a county or the commission or council of any municipality in the county.

(4) “Lost property” means all tangible personal property which does not have an identifiable owner and which has been mislaid on public property, upon a public conveyance, on premises used at the time for business purposes, or in parks, places of amusement, public recreation areas, or other places open to the public in a substantially operable, functioning condition or which has an apparent intrinsic value to the rightful owner.

(5) “Public property” means lands and improvements owned by the Federal Government, the state, the county, or a municipality and includes sovereignty submerged lands located adjacent to the county or municipality,



buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way, and other similar property.

(6) “Unclaimed evidence” means any tangible personal property, including cash, not included within the definition of “contraband article,” as provided in s. 932.701(2), which was seized by a law enforcement agency, was intended for use in a criminal or quasi-criminal proceeding, and is retained by the law enforcement agency or the clerk of the county or circuit court for 60 days after the final disposition of the proceeding and to which no claim of ownership has been made.

**History.**—s. 1, ch. 87-82; s. 15, ch. 89-268; s. 470, ch. 94-356; s. 70, ch. 99-248; s. 28, ch. 2000-197; s. 35, ch. 2002-46; s. 5, ch. 2004-39; s. 30, ch. 2004-344; s. 9, ch. 2006-309; s. 5, ch. 2014-143; s. 10, ch. 2022-142; s. 118, ch. 2023-8.

**705.1015 County or municipal code inspectors or code enforcement officers; duties.**—Employees of a county or municipality whose duty it is to ensure code compliance or enforce codes and ordinances may be designated by the governing body of the county or the municipality to administer the provisions of this chapter which pertain to lost or abandoned property. Designation of such employees shall not provide the employees with the authority to bear arms or make arrests.

**History.**—s. 16, ch. 89-268.

**705.102 Reporting lost or abandoned property.—**

(1) Whenever any person finds any lost or abandoned property, such person shall report the description and location of the property to a law enforcement officer.

(2) The law enforcement officer taking the report shall ascertain whether the person reporting the property wishes to make a claim to it if the rightful owner cannot be identified or located. If the person does wish to make such claim, he or she shall deposit with the law enforcement agency a reasonable sum sufficient to cover the agency’s cost for transportation, storage, and publication of notice. This sum shall be reimbursed to the finder by the rightful owner should he or she identify and reclaim the property.

(3) It is unlawful for any person who finds any lost or abandoned property to appropriate the same to his or her own use or to refuse to deliver the same when required.

(4) Any person who unlawfully appropriates such lost or abandoned property to his or her own use or refuses to deliver such property when required commits theft as defined in s. 812.014, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 87-82; s. 4, ch. 92-79; s. 790, ch. 97-102; s. 105, ch. 2019-167.

**705.103 Procedure for abandoned or lost property.—**

(1) Whenever a law enforcement officer ascertains that an article of lost or abandoned property is present on public property and is of such nature that it can be easily removed, the officer shall take such article into custody and shall make a reasonable attempt to ascertain the rightful owner or lienholder pursuant to the provisions of this section.

(2)(a)1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: (setting forth brief description) is unlawfully upon public property known as (setting forth brief description of location) and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: (setting forth the date of posting of notice), signed: (setting forth name, title, address, and telephone number of law enforcement officer).

b. A derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on the waters of this state, the officer shall cause a notice to be placed upon such vessel in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VESSEL. This vessel, to wit: (setting forth brief description of location) has been determined to be (derelict or a public nuisance) and is unlawfully upon the waters of this state (setting forth brief description of location) and must be removed within 21 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner and other interested parties have the right to a hearing to challenge the determination that this vessel is derelict or otherwise in violation of the law. Please contact (contact information for person who can arrange for a hearing in accordance with this section). The owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition or as a public nuisance will be liable for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: (setting forth the date of posting of notice), signed: (setting forth name, title, address, and telephone number of law enforcement officer).

2. The notices required under subparagraph 1. may not be less than 8 inches by 10 inches and must be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the law enforcement officer shall make a reasonable effort to ascertain the name and address of the owner. If such is reasonably available to the officer, she or he shall mail a copy of such notice to the owner on or before the date of posting. If the property is a motor vehicle as defined in s. 320.01(1) or a vessel as defined in s. 327.02, the law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15. On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any, except that a law enforcement officer who has issued a citation for a violation of s. 823.11 to the owner of a derelict vessel is not required to mail a copy of the notice by certified mail, return receipt requested, to the owner. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the mailed notice must inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency shall follow the processes as set forth in s. 120.569. Local governmental entities shall follow the processes set forth in s. 120.569, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such a hearing. If, at the end of 5 days after posting the notice in sub-subparagraph 1.a., or at the end of 21 days after posting the notice in sub-subparagraph 1.b., and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, and, in the case of a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), has not requested a hearing in accordance with this section, the following shall apply:

a. For abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency may retain any or all of the property for its own use or for use by the state or unit of local government, trade such property to another unit of local government or state agency, donate the property to a charitable organization, sell the property, or notify the appropriate refuse removal service.

b. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency or its designee may:

(I) Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or

(II) Authorize the vessel's use as an artificial reef in accordance with s. 379.249 if all necessary federal, state, and local authorizations are received.

A law enforcement agency or its designee may also take action as described in this sub-subparagraph if, following a hearing pursuant to this section, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict as provided in s. 823.11 or otherwise in violation of the law in accordance with s. 327.73(1)(aa) and a final order has been entered or the case is otherwise closed.

(b) For lost property, the officer shall take custody and the agency shall retain custody of the property for 90 days. The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of this time period.

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than \$100. If the value of the property is \$100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

(3) If the property is sold at public sale pursuant to subparagraph (2)(b)2., the agency shall deduct from the proceeds the costs of transportation, storage, and publication of notice, and any balance of proceeds shall be deposited into an interest-bearing account not later than 30 days after the date of the sale and held there for 1 year. The agency shall provide a bill of sale clearly stating that the sale is subject to any and all liens. The rightful owner of the property may claim the balance of the proceeds within 1 year from the date of the above stated deposit by making application to the agency. If no rightful owner comes forward with a claim to the property within the designated year, the balance of the proceeds shall be deposited into the State School Fund.

(4) The owner of any abandoned or lost property, or in the case of a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the owner or other party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition or as a public nuisance, who, after notice as provided in this section, does not remove such property within the specified period is liable to the law enforcement agency, other governmental entity, or the agency's or entity's designee for all costs of removal, storage, destruction, and disposal of such property, less any salvage value obtained by disposal of the property. Upon final disposition of the property, the law enforcement officer or representative of the law enforcement agency or other governmental entity shall notify the owner, or in the case of a derelict vessel or vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the owner or other party determined to be legally responsible, if known, of the amount owed. In the case of an abandoned vessel or motor vehicle, any person who neglects or refuses to pay such amount is not entitled to be issued a certificate of registration for such vessel or motor vehicle, or any other vessel or motor vehicle, until such costs have been paid. A person who has neglected or refused to pay all costs of removal, storage, disposal, and destruction of a vessel or motor vehicle as provided in this section, after having been provided written notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The law enforcement officer or representative of the law enforcement agency or other governmental entity shall supply the Department of Highway Safety and Motor Vehicles with a list of persons whose vessel registration privileges and motor vehicle privileges have been revoked under this subsection. The department or a person acting as an agent of the department may not issue a certificate of registration to a person whose vessel and motor vehicle registration privileges have been revoked, as provided by this subsection, until such costs have been paid.

(5) Whoever opposes, obstructs, or resists any law enforcement officer or any person authorized by the law enforcement officer in the discharge of her or his duties as provided in this section upon conviction is guilty of a

misdeemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Any law enforcement officer or any person authorized by the law enforcement officer is immune from prosecution, civil or criminal, for reasonable, good faith trespass upon real property while in the discharge of duties imposed by this section.

(7) The rightful owner shall be liable for the law enforcement agency's costs for transportation and storage of lost or abandoned property and the agency's cost for publication of notice of disposition of lost property. If the rightful owner does not pay such costs within 30 days of making claim to the property, title to the property shall vest in the law enforcement agency.

**History.**—s. 3, ch. 87-82; s. 1, ch. 90-307; s. 12, ch. 94-241; s. 471, ch. 94-356; s. 1, ch. 97-51; s. 791, ch. 97-102; s. 29, ch. 2000-197; s. 10, ch. 2006-309; s. 15, ch. 2017-163; s. 29, ch. 2019-76; ss. 27, 28, ch. 2021-184; ss. 11, 12, ch. 2022-142.

#### **705.104 Title to lost or abandoned property.—**

(1) Title to lost or abandoned property is hereby vested in the finder upon the expiration of the 90-day custodial time period specified in s. 705.103(2)(b), provided the notice requirements of s. 705.103 have been met, unless the rightful owner or a lienholder claims the property within that time.

(2) Employees of any state, county, or municipal agency shall be deemed agents of such governmental entity, and lost or abandoned property found by them during the course of their official duties shall be turned in to the proper person or department designated to receive such property by the governmental entity. Such property shall be subject to the provisions of this chapter, after which, if unclaimed by the rightful owner, the title to such property shall be vested in the state, county, or municipality and not in the employee.

(3) Employees of public transportation systems shall be deemed agents of such transportation systems, and lost or abandoned property found on public conveyances, in depots, or in garages of a transportation system shall be turned in to the proper person or department designated to receive such property by the transportation systems. Such property shall be subject to the provisions of this section, after which, if unclaimed by the rightful owner, the title to such property shall be vested in the transportation system and not in the employee.

**History.**—s. 4, ch. 87-82; s. 2, ch. 90-307.

#### **705.105 Procedure regarding unclaimed evidence.—**

(1) Title to unclaimed evidence or unclaimed tangible personal property lawfully seized pursuant to a lawful investigation in the custody of the court or clerk of the court from a criminal proceeding or seized as evidence by and in the custody of a law enforcement agency shall vest permanently in the law enforcement agency 60 days after the conclusion of the proceeding.

(a) If the property is of appreciable value, the agency may elect to:

1. Retain the property for the agency's own use;
2. Transfer the property to another unit of state or local government;
3. Donate the property to a charitable organization;
4. Sell the property at public sale, pursuant to the provisions of s. 705.103.

(b) If the property is not of appreciable value, the law enforcement agency may elect to destroy it.

(2) Nothing in this section shall be construed to repeal or supersede the provisions of s. 790.08 relating to the disposition of weapons and firearms.

**History.**—s. 5, ch. 87-82; s. 5, ch. 90-113.

**705.106 Recovery from person wrongfully in possession.—**Whenever any property described in this chapter, chapter 706, or chapter 707 is ascertained to be wrongfully withheld and the person in possession refuses to give it up to the sheriff on demand, the county attorney of the county in which the property is situated, or the city attorney, if within a municipality, when required to do so by the sheriff, shall enter a suit for said property and prosecute it to a final recovery. All moneys derived from these sources shall be paid by the sheriff into the State Treasury for the benefit of the State School Fund.

**History.**—ss. 4, 5, ch. 344, 1850; RS 2015; GS 2537; RGS 3892; CGL 5799; s. 4, ch. 63-267.

**Note.**—Former s. 705.06.

#### **705.17 Exceptions.—**

(1) Sections 705.101-705.106 do not apply to any personal property lost or abandoned on the campus of any institution in the State University System or on premises owned or controlled by the operator of a public-use airport having regularly scheduled international passenger service.

(2) Sections 705.1015-705.106 do not apply to any personal property lost or abandoned on premises located within a theme park or entertainment complex, as defined in s. 509.013(9), or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with s. 705.185.

**History.**—s. 1, ch. 71-75; s. 6, ch. 87-82; s. 22, ch. 91-110; s. 61, ch. 96-323; s. 1, ch. 2019-6.

**705.18 Disposal of personal property lost or abandoned on university or Florida College System institution campuses; disposition of proceeds from sale.**—Whenever any lost or abandoned personal property is found on a campus of an institution in the State University System or a campus of a Florida College System institution, the president of the institution or the president's designee shall take charge of the property and make a record of the date such property was found. If the property is not claimed by the owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the president, the president or his or her designee shall dispose of or make use of the property in accordance with established policies and procedures that best meet the needs of the university or the Florida College System institution and its students. The rightful owner of the property may reclaim the property at any time prior to the disposition, sale, or use of the property in accordance with this section and the established policies and procedures of the university or the Florida College System institution.

**History.**—s. 1, ch. 71-75; s. 1, ch. 77-131; s. 62, ch. 96-323; s. 1762, ch. 97-102; s. 44, ch. 2010-225; s. 2, ch. 2011-177.

#### **705.182 Disposal of personal property found on the premises of public-use airports.—**

(1) Whenever any personal property, other than an aircraft or motor vehicle, is found on premises owned or controlled by the operator of a public-use airport, the director of the airport or the director's designee shall take charge of the property and make a record of the date such property was found.

(2) If, within 30 calendar days after such property is found or for a longer period of time as may be deemed appropriate by the director or the director's designee under the circumstances, the property is not claimed by the owner, the director or the director's designee may:

- (a) Retain any or all of the property for use by the airport or for use by the state or the unit of local government owning or operating the airport;
- (b) Trade such property to another unit of local government or a state agency;
- (c) Donate the property to a charitable organization;
- (d) Sell the property; or
- (e) Dispose of the property through an appropriate refuse removal company or a company that provides salvage services for the type of personal property found or located on the airport premises.

(3) The airport shall notify the owner, if known, of the property found on the airport premises and that the airport intends to dispose of the property as provided in subsection (2).

(4) If the airport elects to sell the property under paragraph (2)(d), the property must be sold at a public auction either on the Internet or at a specified physical location after giving notice of the time and place of sale, at least 10 calendar days prior to the date of sale, in a publication of general circulation within the county where the airport is located and after written notice, via certified mail, return receipt requested, is provided to the owner, if known. Any such notice shall be sufficient if the notice refers to the airport's intention to sell all then-accumulated found property, and there is no requirement that the notice identify each item to be sold. The rightful owner of such property may reclaim the property at any time prior to sale by presenting acceptable evidence of ownership to the airport director or the director's designee. All proceeds from the sale of the property shall be retained by the airport for use by the airport in any lawfully authorized manner.

(5) Nothing in this section shall preclude the airport from allowing a domestic or international air carrier or other tenant, on premises owned or controlled by the operator of a public-use airport, to establish its own lost and



found procedures for personal property and to dispose of such personal property.

(6) A purchaser or recipient in good faith of personal property sold or obtained under this section shall take the property free of the rights of persons then holding any legal or equitable interest thereto, whether or not recorded.

History.—s. 45, ch. 2010-225.

**705.183 Disposal of derelict or abandoned aircraft on the premises of public-use airports.—**

(1)(a) Whenever any derelict or abandoned aircraft is found or located on premises owned or controlled by the operator of a public-use airport, whether or not such premises are under a lease or license to a third party, the director of the airport or the director's designee shall make a record of the date the aircraft was found or determined to be present on the airport premises.

(b) For purposes of this section, the term:

1. "Abandoned aircraft" means an aircraft that has been disposed of on a public-use airport in a wrecked, inoperative, or partially dismantled condition or an aircraft that has remained in an idle state on premises owned or controlled by the operator of a public-use airport for 45 consecutive calendar days.

2. "Derelict aircraft" means any aircraft that is not in a flyable condition, does not have a current certificate of air worthiness issued by the Federal Aviation Administration, and is not in the process of actively being repaired.

(2) The director or the director's designee shall contact the Federal Aviation Administration, Aircraft Registration Branch, to determine the name and address of the last registered owner of the aircraft and shall make a diligent personal search of the appropriate records, or contact an aircraft title search company, to determine the name and address of any person having an equitable or legal interest in the aircraft. Within 10 business days after receipt of the information, the director or the director's designee shall notify the owner and all persons having an equitable or legal interest in the aircraft by certified mail, return receipt requested, of the location of the derelict or abandoned aircraft on the airport premises, that fees and charges for the use of the airport by the aircraft have accrued and the amount thereof, that the aircraft is subject to a lien under subsection (5) for the accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft, that the lien is subject to enforcement pursuant to law, and that the airport may cause the use, trade, sale, or removal of the aircraft as described in s. 705.182(2)(a), (b), (d), or (e) if, within 30 calendar days after the date of receipt of such notice, the aircraft has not been removed from the airport upon payment in full of all accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft. Such notice may require removal of the aircraft in less than 30 calendar days if the aircraft poses a danger to the health or safety of users of the airport, as determined by the director or the director's designee.

(3) If the owner of the aircraft is unknown or cannot be found, the director or the director's designee shall cause a laminated notice to be placed upon such aircraft in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: (setting forth brief description) is unlawfully upon public property known as (setting forth brief description of location) and has accrued fees and charges for the use of the (same description of location as above) and for the transportation, storage, and removal of the property. These accrued fees and charges must be paid in full and the property must be removed within 30 calendar days after the date of this notice; otherwise, the property will be removed and disposed of pursuant to chapter 705, Florida Statutes. The property is subject to a lien for all accrued fees and charges for the use of the public property known as (same description of location as above) by such property and for all fees and charges incurred by the public property known as (same description of location as above) for the transportation, storage, and removal of the property. This lien is subject to enforcement pursuant to law. The owner will be liable for such fees and charges, as well as the cost for publication of this notice. Dated this: (setting forth the date of posting of notice), signed: (setting forth name, title, address, and telephone number of law enforcement officer).

Such notice shall be not less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the weather. If, at the end of 30 calendar days after posting the notice, the owner or any person interested in the described derelict or abandoned aircraft has not removed the aircraft from the airport upon

payment in full of all accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft, or shown reasonable cause for failure to do so, the director or the director's designee may cause the use, trade, sale, or removal of the aircraft as described in s. 705.182(2)(a), (b), (d), or (e).

(4) Such aircraft shall be removed within the time period specified in the notice provided under subsection (2) or subsection (3). If, at the end of such period of time, the owner or any person interested in the described derelict or abandoned aircraft has not removed the aircraft from the airport upon payment in full of all accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft, or shown reasonable cause for the failure to do so, the director or the director's designee may cause the use, trade, sale, or removal of the aircraft as described in s. 705.182(2)(a), (b), (d), or (e).

(a) If the airport elects to sell the aircraft in accordance with s. 705.182(2)(d), the aircraft must be sold at public auction after giving notice of the time and place of sale, at least 10 calendar days prior to the date of sale, in a publication of general circulation within the county where the airport is located and after providing written notice of the intended sale to all parties known to have an interest in the aircraft.

(b) If the airport elects to dispose of the aircraft in accordance with s. 705.182(2)(e), the airport shall be entitled to negotiate with the company for a price to be received from such company in payment for the aircraft, or, if circumstances so warrant, a price to be paid to such company by the airport for the costs of disposing of the aircraft. All information pertaining to the establishment of such price and the justification for the amount of such price shall be prepared and maintained by the airport, and such negotiated price shall be deemed to be a commercially reasonable price.

(c) If the sale price or the negotiated price is less than the airport's then current charges and costs against the aircraft, or if the airport is required to pay the salvage company for its services, the owner of the aircraft shall remain liable to the airport for the airport's costs that are not offset by the sale price or negotiated price, in addition to the owner's liability for payment to the airport of the price the airport was required to pay any salvage company. All costs incurred by the airport in the removal, storage, and sale of any aircraft shall be recoverable against the owner of the aircraft.

(5) The airport shall have a lien on a derelict or abandoned aircraft for all fees and charges for the use of the airport by such aircraft and for all fees and charges incurred by the airport for the transportation, storage, and removal of the aircraft. As a prerequisite to perfecting a lien under this section, the airport director or the director's designee must serve a notice in accordance with subsection (2) on the last registered owner and all persons having an equitable or legal interest in the aircraft. Serving the notice does not dispense with recording the claim of lien.

(6)(a) For the purpose of perfecting its lien under this section, the airport shall record a claim of lien which shall state:

1. The name and address of the airport.
2. The name of the last registered owner of the aircraft and all persons having a legal or equitable interest in the aircraft.
3. The fees and charges incurred by the aircraft for the use of the airport and the fees and charges for the transportation, storage, and removal of the aircraft.

4. A description of the aircraft sufficient for identification.

(b) The claim of lien shall be signed and sworn to or affirmed by the airport director or the director's designee.

(c) The claim of lien shall be sufficient if it is in substantially the following form:

#### CLAIM OF LIEN

State of

County of

Before me, the undersigned notary public, personally appeared , who was duly sworn and says that he/she is the of , whose address is ; and that the following described aircraft:

(Description of aircraft)

owned by , whose address is , has accrued \$ in fees and charges for the use by the aircraft of and for the transportation, storage, and removal of the aircraft from ; that the lienor served its notice to the last registered owner and all persons having a legal or equitable interest in the aircraft on , (year), by .

(Signature)

Sworn to (or affirmed) and subscribed before me this day of , (year), by (name of person making statement).

(Signature of Notary Public) (Print, Type, or Stamp Commissioned name of Notary Public)

Personally Known OR Produced as identification.

However, the negligent inclusion or omission of any information in this claim of lien which does not prejudice the last registered owner does not constitute a default that operates to defeat an otherwise valid lien.

(d) The claim of lien shall be served on the last registered owner of the aircraft and all persons having an equitable or legal interest in the aircraft. The claim of lien shall be so served before recordation.

(e) The claim of lien shall be recorded with the clerk of court in the county where the airport is located. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The lien shall attach at the time of recordation and shall take priority as of that time.

(7) A purchaser or recipient in good faith of an aircraft sold or obtained under this section takes the property free of the rights of persons then holding any legal or equitable interest to the aircraft, whether or not recorded. The purchaser or recipient is required to notify the appropriate Federal Aviation Administration office of such change in the registered owner of the aircraft.

(8) If the aircraft is sold at public sale, the airport shall deduct from the proceeds of sale the costs of transportation, storage, publication of notice, and all other costs reasonably incurred by the airport, and any balance of the proceeds shall be deposited into an interest-bearing account not later than 30 calendar days after the airport's receipt of the proceeds and held there for 1 year. The rightful owner of the aircraft may claim the balance of the proceeds within 1 year after the date of the deposit by making application to the airport and presenting acceptable written evidence of ownership to the airport's director or the director's designee. If no rightful owner claims the proceeds within the 1-year period, the balance of the proceeds shall be retained by the airport to be used in any manner authorized by law.

(9) Any person acquiring a legal interest in an aircraft that is sold by an airport under this section or s. 705.182 shall be the lawful owner of such aircraft and all other legal or equitable interests in such aircraft shall be divested and of no further force and effect, provided that the holder of any such legal or equitable interests was notified of the intended disposal of the aircraft to the extent required in this section. The airport may issue documents of disposition to the purchaser or recipient of an aircraft disposed of under this section.

**History.**—s. 46, ch. 2010-225.

#### **705.184 Derelict or abandoned motor vehicles on the premises of public-use airports.—**

(1)(a) Whenever any derelict or abandoned motor vehicle is found on premises owned or controlled by the operator of a public-use airport, including airport premises leased to a third party, the director of the airport or the director's designee may take charge of the motor vehicle and make a record of the date such motor vehicle was found.

(b) For purposes of this section, the term:

1. "Abandoned motor vehicle" means a motor vehicle that has been disposed of on a public-use airport in a wrecked, inoperative, or partially dismantled condition or a motor vehicle that has remained in an idle state on the premises of a public-use airport for 45 consecutive calendar days.

2. "Derelict motor vehicle" means any motor vehicle that is not in a drivable condition.

(c) After the information relating to the abandoned or derelict motor vehicle is recorded in the airport's records, the director or the director's designee may cause the motor vehicle to be removed from airport premises by the airport's wrecker or by a licensed independent wrecker company to be stored at a suitable location on or off the airport premises. If the motor vehicle is to be removed from airport premises by the airport's wrecker, the airport must follow the procedures in subsections (2)-(8). The procedures in subsections (2)-(8) do not apply if the

motor vehicle is removed from the airport premises by a licensed independent wrecker company, and the licensed wrecking company shall comply with s. 713.78.

(2) The airport director or the director's designee shall contact the Department of Highway Safety and Motor Vehicles to notify that department that the airport has possession of the abandoned or derelict motor vehicle and to determine the name and address of the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and any person who has filed a lien on the motor vehicle. Within 7 business days after receipt of the information, the director or the director's designee shall send notice by certified mail, return receipt requested, to the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against the motor vehicle. The notice shall state the fact of possession of the motor vehicle, that charges for reasonable towing, storage, and parking fees, if any, have accrued and the amount thereof, that a lien as provided in subsection (6) will be claimed, that the lien is subject to enforcement pursuant to law, that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (4), and that any motor vehicle which, at the end of 30 calendar days after receipt of the notice, has not been removed from the airport upon payment in full of all accrued charges for reasonable towing, storage, and parking fees, if any, may be disposed of as provided in s. 705.182(2)(a), (b), (d), or (e), including, but not limited to, the motor vehicle being sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less.

(3) If attempts to notify the owner or lienholder pursuant to subsection (2) are not successful, the requirement of notice by mail shall be considered met and the director or the director's designee, in accordance with subsection (5), may cause the motor vehicle to be disposed of as provided in s. 705.182(2)(a), (b), (d), or (e), including, but not limited to, the motor vehicle being sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less.

(4)(a) The owner of, or any person with a lien on, a motor vehicle removed pursuant to subsection (1), may, within 10 calendar days after the time he or she has knowledge of the location of the motor vehicle, file a complaint in the county court of the county in which the motor vehicle is stored to determine if his or her property was wrongfully taken or withheld.

(b) Upon filing a complaint, an owner or lienholder may have his or her motor vehicle released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the fees for towing, storage, and accrued parking, if any, to ensure the payment of such fees in the event he or she does not prevail. Upon the posting of the bond or other adequate security and the payment of any applicable fee, the clerk of the court shall issue a certificate notifying the airport of the posting of the bond or other adequate security and directing the airport to release the motor vehicle. At the time of such release, after reasonable inspection, the owner or lienholder shall give a receipt to the airport reciting any claims he or she has for loss or damage to the motor vehicle or the contents of the motor vehicle.

(5) If, after 30 calendar days after receipt of the notice, the owner or any person claiming a lien has not removed the motor vehicle from its storage location upon payment in full of all accrued charges for reasonable towing, storage, and parking fees, if any, or shown reasonable cause for the failure to do so, the airport director or the director's designee may dispose of the motor vehicle as provided in s. 705.182(2)(a), (b), (d), or (e). If the airport elects to sell the motor vehicle pursuant to s. 705.182(2)(d), the motor vehicle may be sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less. The sale shall be a public auction either on the Internet or at a specified physical location. If the date of the sale was not included in the notice required in subsection (2), notice of the sale, sent by certified mail, return receipt requested, shall be given to the owner of the motor vehicle and to all persons claiming a lien on the motor vehicle. Such notice shall be mailed not less than 10 calendar days before the date of the sale. In addition to the notice by mail, public notice of the time and place of the sale at

auction shall be made by publishing a notice of the sale at auction one time, at least 10 calendar days prior to the date of sale, in a newspaper of general circulation in the county in which the sale is to be held. All costs incurred by the airport for the towing, storage, and sale of the motor vehicle, as well as all accrued parking fees, if any, shall be recovered by the airport from the proceeds of the sale, and any proceeds of the sale in excess of such costs shall be retained by the airport for use by the airport in any manner authorized by law.

(6) The airport pursuant to this section or, if used, a licensed independent wrecker company pursuant to s. 713.78 shall have a lien on an abandoned or derelict motor vehicle for all reasonable towing, storage, and accrued parking fees, if any, except that no storage fee shall be charged if the motor vehicle is stored less than 6 hours. As a prerequisite to perfecting a lien under this section, the airport director or the director’s designee must serve a notice in accordance with subsection (2) on the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, or lienholders are not successful, the requirement of notice by mail shall be considered met. Serving of the notice does not dispense with recording the claim of lien.

(7)(a) For the purpose of perfecting its lien under this section, the airport shall record a claim of lien which shall state:

1. The name and address of the airport.
  2. The name of the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against the motor vehicle.
  3. The costs incurred from reasonable towing, storage, and parking fees, if any.
  4. A description of the motor vehicle sufficient for identification.
- (b) The claim of lien shall be signed and sworn to or affirmed by the airport director or the director’s designee.
- (c) The claim of lien shall be sufficient if it is in substantially the following form:

CLAIM OF LIEN

State of

County of

Before me, the undersigned notary public, personally appeared , who was duly sworn and says that he/she is the of , whose address is ; and that the following described motor vehicle:

(Description of motor vehicle)

owned by , whose address is , has accrued \$ in fees for a reasonable tow, for storage, and for parking, if applicable; that the lienor served its notice to the owner, the insurance company insuring the motor vehicle notwithstanding the provisions of s. 627.736, Florida Statutes, and all persons of record claiming a lien against the motor vehicle on , (year), by .

(Signature)

Sworn to (or affirmed) and subscribed before me this day of , (year), by (name of person making statement).

(Signature of Notary Public) (Print, Type, or Stamp Commissioned name of Notary Public)

Personally Known OR Produced as identification.

However, the negligent inclusion or omission of any information in this claim of lien which does not prejudice the owner does not constitute a default that operates to defeat an otherwise valid lien.

(d) The claim of lien shall be served on the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle notwithstanding the provisions of s. 627.736, or lienholders are not successful, the requirement of notice by mail shall be considered met. The claim of lien shall be so served before recordation.

(e) The claim of lien shall be recorded with the clerk of court in the county where the airport is located. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The lien shall attach at the time of recordation and shall take priority as of that time.



(8) A purchaser or recipient in good faith of a motor vehicle sold or obtained under this section takes the property free of the rights of persons then holding any legal or equitable interest thereto, whether or not recorded.

**History.**—s. 47, ch. 2010-225.

**705.185 Disposal of personal property lost or abandoned on the premises of certain facilities.**—When any lost or abandoned personal property is found on premises located within a theme park or entertainment complex, as defined in s. 509.013(9), or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with this section, any lost or abandoned property must be delivered to such owner or operator, who must take charge of the property and make a record of the date such property was found. If the property is not claimed by its owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the owner or operator of the premises, the owner or operator of the premises may not sell and must dispose of the property or donate it to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code for sale or other disposal as the charitable institution deems appropriate. The rightful owner of the property may reclaim the property from the owner or operator of the premises at any time before the disposal or donation of the property in accordance with this section and the established policies and procedures of the owner or operator of the premises. A charitable institution that accepts an electronic device, as defined in s. 815.03(9), access to which is not secured by a password or other personal identification technology, shall make a reasonable effort to delete all personal data from the electronic device before its sale or disposal.

**History.**—s. 2, ch. 2019-6.

**705.19 Abandonment of animals by owner; procedure for handling.**—

(1) Any animal placed in the custody of a licensed veterinarian or bona fide boarding kennel for treatment, boarding, or other care, which shall be abandoned by its owner or the owner’s agent for a period of more than 10 days after written notice is given to the owner or the owner’s agent at her or his last known address may be turned over to the custody of the nearest humane society or dog pound in the area for disposal as such custodian may deem proper.

(2) The giving of notice to the owner, or the agent of the owner, of such animal by the licensed veterinarian or kennel operator as provided in subsection (1) shall relieve the veterinarian or kennel operator and any custodian to whom such animal may be given of any further liability for disposal. Such procedure by a licensed veterinarian shall not constitute grounds for disciplinary procedure under chapter 474.

(3) For the purpose of this section, the term “abandonment” means to forsake entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner or the owner’s agent. Such abandonment shall constitute the relinquishment of all rights and claim by the owner to such animal.

**History.**—ss. 1, 2, ch. 79-228; ss. 1, 2, ch. 81-157; s. 3, ch. 81-318; s. 792, ch. 97-102.

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## The 2017 Florida Statutes

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[Title XLVI](#)  
CRIMES[Chapter 800](#)  
LEWDNESS; INDECENT EXPOSURE[View Entire Chapter](#)

**800.03 Exposure of sexual organs.**—It is unlawful to expose or exhibit one’s sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose. Violation of this section is a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#). A mother’s breastfeeding of her baby does not under any circumstance violate this section.

**History.**—s. 1, ch. 7360, 1917; RGS 5445; CGL 7588; s. 1, ch. 61-51; s. 779, ch. 71-136; s. 3, ch. 93-4.

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## The 2017 Florida Statutes

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[Title XLVI](#)  
CRIMES

[Chapter 810](#)  
BURGLARY AND TRESPASS

[View Entire Chapter](#)

### **810.09 Trespass on property other than structure or conveyance. —**

(1)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. [810.011](#); or
2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass,

commits the offense of trespass on property other than a structure or conveyance.

(b) As used in this section, the term “unenclosed curtilage” means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

(2)(a) Except as provided in this subsection, trespass on property other than a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(b) If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance, the offender commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(c) If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she is guilty of a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and that the person to be taken into custody and detained has committed or is committing the violation. If a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention in compliance with the requirements of this paragraph does not result in criminal or civil liability for false arrest, false imprisonment, or unlawful detention.

(d) The offender commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#), if the property trespassed is a construction site that is:

1. Greater than 1 acre in area and is legally posted and identified in substantially the following manner: “THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”; or
2. One acre or less in area and is identified as such with a sign that appears prominently, in letters of not less than 2 inches in height, and reads in substantially the following manner: “THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.” The sign shall be placed at the location on the property where the permits for construction are located. For construction sites of 1



acre or less as provided in this subparagraph, it shall not be necessary to give notice by posting as defined in s. [810.011\(5\)](#).

(e) The offender commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#), if the property trespassed upon is commercial horticulture property and the property is legally posted and identified in substantially the following manner: “THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURE PRODUCTS, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”

(f) The offender commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#), if the property trespassed upon is an agricultural site for testing or research purposes that is legally posted and identified in substantially the following manner: “THIS AREA IS A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”

(g) The offender commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#), if the property trespassed upon is a domestic violence center certified under s. [39.905](#) which is legally posted and identified in substantially the following manner: “THIS AREA IS A DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”

(h) Any person who in taking or attempting to take any animal described in s. [379.101\(19\)](#) or (20), or in killing, attempting to kill, or endangering any animal described in s. [585.01\(13\)](#) knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization commits trespass, a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). For purposes of this paragraph, the term “potentially lethal projectile” includes any projectile launched from any firearm, bow, crossbow, or similar tensile device. This section does not apply to any governmental agent or employee acting within the scope of his or her official duties.

(i) The offender commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#), if the property trespassed upon is an agricultural chemicals manufacturing facility that is legally posted and identified in substantially the following manner: “THIS AREA IS A DESIGNATED AGRICULTURAL CHEMICALS MANUFACTURING FACILITY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”

(3) As used in this section, the term “authorized person” or “person authorized” means any owner, his or her agent, or a community association authorized as an agent for the owner, or any law enforcement officer whose department has received written authorization from the owner, his or her agent, or a community association authorized as an agent for the owner, to communicate an order to leave the property in the case of a threat to public safety or welfare.

**History.**—s. 35, ch. 74-383; s. 22, ch. 75-298; s. 3, ch. 76-46; s. 2, ch. 80-389; s. 34, ch. 88-381; s. 186, ch. 91-224; s. 2, ch. 94-263; s. 2, ch. 94-307; s. 48, ch. 96-388; s. 1818, ch. 97-102; s. 3, ch. 97-201; s. 5, ch. 2000-369; s. 2, ch. 2001-182; s. 47, ch. 2001-279; s. 36, ch. 2002-46; s. 14, ch. 2006-289; s. 1, ch. 2006-295; s. 2, ch. 2007-123; s. 205, ch. 2008-247.