



## Agreement Reached by ACLU and City of Miami Retains Core Pottinger Protections for Homeless

*City sought to drastically scale back historic 1998 Pottinger Agreement which protects Miami's homeless from police harassment; new agreement reaffirms and clarifies rights of homeless individuals*

**FOR IMMEDIATE RELEASE:** December 12, 2013

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**MIAMI** –Yesterday, attorneys for the ACLU of Florida and the City of Miami reached an agreement ending the city's efforts to modify the historic Pottinger Settlement Agreement, a 1998 agreement with the full force of a court order, that protects homeless individuals from being harassed or arrested by law enforcement for the purpose of driving them from public areas. An addendum to the original Agreement, filed today in the United States District Court for the Southern District of Florida, keeps in place critical protections for homeless people in Miami and gives new programs to counter homelessness a chance to succeed.

The original Pottinger Agreement was won after a decade of litigation involving two trials, two appeals, and nearly two years of mediation in which a federal court found intentional and systematic violations of the constitutional rights of homeless persons by the City of Miami.

In September 2013, the city filed a motion in federal court to modify the agreement, potentially enabling a resurrection of the policies which were found to violate the rights of the city's homeless in *Pottinger*. The addendum to the Agreement was reached through court-ordered mediation after the ACLU of Florida, who represented the city's homeless in the original *Pottinger* case, filed a response opposing and seeking to dismiss the city's motion to amend the Agreement.

Today's agreement puts a two-year moratorium on further motions by the city to modify the agreement to allow "Housing First" efforts to solve the issue of homelessness in the city to have a chance to succeed.

**Benjamin Waxman**, an attorney with the law firm Robbins, Tunkey, Ross, Amsel, Raben & Waxman, P.A., and lead counsel in the Pottinger case, had this to say about today's agreement:

"The modified agreement is something that Miami residents should be proud of, and prevents a return to the failed policy of criminalizing homelessness that led to the widespread violation of people's rights without even solving the core problem. The addendum filed today, plus the moratorium on new efforts to strip protections for homeless people, will keep the balance that has protected people from police harassment for 15 years while allowing downtown Miami to

undergo the renaissance it is currently enjoying. It recognizes that Miami can be a world class city and international travel destination while still protecting the rights of the most vulnerable people in the city and giving strategies to dramatically reduce chronic homelessness a chance to take hold.”

**Maria Kayanan, Associate Legal Director for the ACLU of Florida**, said the following about today’s agreement:

“The agreement reached with the city keeps vital protections intact while giving Housing First, a proven, fact-based and humane solution to chronic homelessness, the opportunity to make a difference in our community. Miami-Dade County’s Homeless Trust is already implementing the program, which is far better for our community than the changes originally proposed by the City. For fifteen years, the Pottinger agreement has protected the dignity, property, and constitutional rights of Miami’s homeless persons while downtown Miami has thrived. Addressing homelessness through the criminal justice system is counter-productive.

“However, no accord reached could have solved the issue of homeless sex offenders until the County repeals its draconian 2500 foot sex offender residency restrictions or safe and permanent housing is built that will provide lawful residences for men and women who have served their sentences but have no place to live. The ACLU will continue to urge the County to revisit its residency restrictions, and to take whatever action is available to put an end to the local and state laws that are the root cause of homelessness among former offenders.

“While not perfect, today’s agreement keeps the spirit of Pottinger, and the rights it protects, in place.”

**Stephen Schnably**, a law professor at the University of Miami and one of the Pottinger lawyers since 1994 as a Cooperating Attorney for the Miami Chapter of the ACLU of Florida, added the following:

“Today’s agreement keeps the heart of the historic agreement intact. The original agreement has served as a national model for protecting the homeless, and the city’s motion to modify the agreement would have effectively taken Miami back a quarter century to the failed policies of treating homelessness as a crime. What was filed with the court today will keep downtown Miami from becoming a Constitution-free zone for our homeless citizens.”

A copy of the addendum filed today is available here: <http://aclufl.org/resources/pottinger-agreement-addendum/>

A series of FAQs about the Pottinger Agreement, the rights it protects, and common misconceptions is available here: <http://aclufl.org/resources/pottinger-agreement-faq/>

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### **About the ACLU of Florida**

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