

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.

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 29th day of October, 2013.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:
Counsel of Record