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February 3, 2010

Mayor Matti Herrera Bower
City of Miami Beach
Office of the Mayor & Commission, 4th Floor
1700 Convention Center Drive
Miami Beach, FL 33139

RE: Strickland v. City of Miami Beach: Stop Targeting and Arresting Gay Men and People Who Report Police Misconduct.

Dear Mayor Bower:

Please be advised that the American Civil Liberties Union Foundation of Florida represents Mr. Harold Strickland in connection with his claims arising from his unlawful arrest near Flamingo Park on March 13, 2009. By separate notice as required by Florida law, we have notified the City of Miami Beach ("the City") that we intend to sue the City and Miami Beach Police Department ("MBPD") officers Frankly Forte and Elliot Hazzi for damages to stop the unlawful targeting, harassment and arrests of gay men in the Flamingo Park neighborhood and to seek all appropriate remedies for the unlawful arrest of Mr. Strickland, who was arrested by Officers Forte and Hazzi for reporting to a 911 operator that they were beating and kicking a man who lay handcuffed on the ground. The officers' unlawful conduct was a gross violation of Mr. Strickland's rights, and their vile comments to him, set forth in detail later in this letter, reflect the officers' anti-gay animus.

MBPD officers also have an alarming history of arresting individuals, particularly African-American men and women, who witness police misconduct. During Urban Beach Week over Memorial Day weekend, the ACLU of Florida received reports that MBPD officers threatened and then arrested people of color who observed and photographed officers' unlawful arrests. MBPD officers forcibly seized SIM cards from observers' cell phones after they used their cell phone cameras to document incidents of police misconduct.

Strickland, 45, is a gay former Miami Beach resident who now lives in Los Angeles where he runs what was -- until his arrest -- a successful business recruiting professional household staff for clients around the country. On March 12, 2009, Strickland was in Miami Beach on a business trip. While in town, he went out to Twist, a popular gay bar. Upon leaving Twist at around 1 a.m., Strickland headed toward West Avenue to view his former apartment, which had since been remodeled. From there, Strickland walked up Michigan Avenue to the Albion Hotel, where he was staying.

As Strickland walked on Michigan Avenue along the west side of Flamingo Park, speaking to his sister on his cell phone, he saw police officers chase away two men in the park who were kissing – the men were not engaged in any illegal conduct. He then saw two men who appeared to be undercover police officers, and were later identified as Officers Hazzi and Forte, chase a young Spanish-speaking male through the parking lot next to Flamingo Park and onto Michigan Avenue. Still talking with his sister over the phone, Strickland watched as the officers dragged the man to the ground, handcuffed him, and began beating him.

The young man (John Doe, an assumed name to protect his privacy) lives in the apartment building immediately adjacent to the parking lot. The two officers chased and beat him for doing nothing more than walking within a few yards of his own home and trying to engage a police officer in conversation. While the officers chased Doe, he yelled, “Who are you?” and “Why are you chasing me?” He had no idea why he was being chased or that the men chasing him were in fact police officers.

As cell phone records confirm, Strickland told his sister he would call her back and, at 1:05 a.m., he called 911. Strickland reported to the emergency dispatch officer at MBPD that the two undercover officers had handcuffed the man, who was on the ground next to a car, and were kicking him “like his head was a football.” The dispatcher asked Strickland for his location and to walk closer so that he could attempt to read and relay the license plate on the officers’ car. As he walked closer he saw and reported to the 911 dispatcher that there was no license plate on the car.

Strickland had attracted the attention of the two officers beating Doe on the ground; they approached Strickland, demanded to know what he was doing, took Strickland’s telephone, and ended his 911 call. Strickland told the officers that he was on the telephone with 911 because they were attacking Doe. The officers then told Strickland: “We know what you’re doing here. We’re sick of all the fucking fags in the neighborhood.” The officers pushed Strickland to the ground and tied his hands behind his back.

While Strickland was on the ground, the officers continued to spew anti-gay epithets. They called him a “fucking fag” and told him he was going to “get it good in jail.” Strickland explained to the officers why he had approached them and called 911. He told them he was walking to his hotel and asked them to look in his pocket to get his room key as proof he was telling the truth. When one officer continued to hurl anti-gay slurs, Strickland told them he was going to report them. In response, the officers told him that people like him “disappear every day.” The officers laughed and one asked the other, “should we just take him downtown and get rid of him?”

The officers transported Strickland and Doe to MBPD headquarters. Strickland was escorted to a room where Officers Forte and Hazzi began filling out paperwork. One officer told Strickland that he "looked like a fag." When the officers learned that Strickland lived in West Hollywood, California, they laughed and one said "that's where there are a lot of Queers" and "[Strickland] should have just stayed there because now [he] was going to go to jail." In response to this abuse, Strickland asked if that officer's name was on the report. Instead of answering, the officer walked very close to Strickland and asked if Strickland was trying to scare him. The officer told Strickland that if he didn't keep his mouth shut he would "regret it"; it would take "two seconds for him to get a bench warrant for his arrest"; and that although *this* time Strickland was in jail, the "*next* time he would just disappear."

While in the police station, Doe heard one officer ask the other what charges they could lodge against Strickland and Doe. Eventually, Doe was charged with three counts, including loitering and prowling, resisting arrest, and escape. Strickland was charged with loitering and prowling.

In their arrest reports for Doe and Strickland, the officers told very different stories.

Officer Elliot Hazzi wrote in his arrest affidavit for Doe:

While working in an undercover capacity myself and Ofc F. Forte ID#888, observed Def walking into the parking lot of Flamingo Park. While we were sitting inside the vehicle parked at the end of the parking lot observing Def looking into vehicles, he went to our vehicle and looked at us then he went to the back of the parking lot and concealed himself in between the bushes while he continued to look towards our vehicle (unmarked). Def then approached the Front Driver's door. At this point I exited my vehicle and Def attempted to engage in conversation with me. I identified myself as a police ofc with my badge hanging from my neck and a police radio in my hand. As soon as Def Found out I was a police ofc he took off running while I was asking him his name. I ran after Def and was able to catch up to him and place him into custody . After Miranda per card, Def was unable to dispell [*sic*] my alarm and explain what he was doing looking into cars including my vehicle. After Def was handcuffed while I was moving my vehicle Def ran with handcuffs on from Ofc Forte. I was able to catch up to Def in my vehicle and while he was running he lost balance and fell to the ground and suffered minor scrapes on his arms. Def arrested and transported to MBPD.

Officer Frankly Forte wrote in Strickland's arrest report:

While assigned to an [undercover] detail capacity at above location, myself and Ofc. Hazzi #887 observed the Defendant walking northbound in the 1400

block of Michigan Ave. Further Observation revealed the defendant walking up to parked vehicles (approx. 6) and attempting to open the doors. Upon approaching the Defendant and identifying ourselves as police officers from MBPD with badge, radio, and MBPD I.D., Defendant attempted to conceal himself behind a silver Toyota Tacoma which was parked in the parking lot of the above location. Upon making contact with Defendant, I read him Miranda rights per card. Defendant post-miranda advised he was visiting a friend in the area but was unable to provide a name or address. Due to Defendant's conflicting stories, he could not dispel officers alarm and for the safety of property and persons in the area. Defendant arrested and transported to MBPD for processing.

After initially pleading no contest to the loitering and prowling charge so that he could get out of jail, Strickland requested the assistance of the American Civil Liberties Union ("ACLU"). Without objection from the State, we successfully moved to withdraw Strickland's plea. While the case was pending, we took both officers' depositions. The officers' stories completely contradict each other and the facts as set forth in the arrest report. After seeing the evidence, the Assistant State Attorney *nolle prossed* the criminal charges against Strickland.

The tape of the 911 call that Strickland made in the six minutes leading up to his arrest unquestionably confirms his version of events. That tape establishes that Strickland was indeed on the telephone with the 911 dispatcher reporting the police beating when the police officers approached Strickland, asked him what he is doing, and told him to sit down and give them ID. At Officer Forte's deposition, *before* he heard the tape, Forte asserted that the criminal conduct in which Strickland allegedly engaged occurred, at most, a minute or two before he and Hazzi approached Strickland. The recording of the conversation with 911 -- for the six minutes leading up to the officer's approach -- confirms that Forte's account was false. Strickland's telephone records confirm that he was on the telephone with his sister for the 22 minutes immediately before the 911 call.

The Miami Beach Police Department must stop its unlawful practice of targeting gay men for arrest without probable cause and harassing individuals - - visitors and residents alike - - who observe, document and attempt to report police misconduct of any nature. To that end, the Miami Beach Police Department should (1) institute *immediate* remedial action to halt the harassment, intimidation and arrest of individuals who observe, document or report police misconduct; (2) discipline officers Hazzi and Forte for their gross misconduct in the Strickland matter; (3) consider referring Officers Hazzi and Forte to the State Attorney's office for possible criminal prosecution because the sworn deposition testimony of the officers in this case conflicts with the tape recording of Strickland's 911 call, Strickland's cell phone record, and the officers' own arrest affidavits, indicating that the officers lied in their report of the incident in order to cover-up their misconduct. The City must also pay Strickland damages as set forth in our section 786 Notice of Intent to Sue.

We trust that you will give this matter your prompt attention and return Miami Beach to its rightful place as one of the most open, accepting, and gay-friendly locations in the country for LGBT visitors and residents alike and unequivocally end police harassment of *all* individuals who take a stand against police misconduct and brutality.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert F. Rosenwald, Jr.", written in a cursive style.

Robert F. Rosenwald, Jr.
Director, LGBT Advocacy Project