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Groups plan to sue city over FTAA actions by police

Several groups are preparing federal suits accusing the city of Miami and law enforcement agencies of silencing dissent during the free-trade summit.

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First came their protests against free trade. Now comes their legal war against the city of Miami.

Several groups, including the American Civil Liberties Union, the AFL-CIO and the National Lawyers Guild, are preparing multiple federal lawsuits accusing law enforcement officials of a host of civil rights violations during last month's free trade summit, from curbing free speech to using excessive force.

Led by the Miami Police Department, about 2,500 police officers provided security during the Free Trade Area of the Americas meeting in downtown Miami, which drew several thousand protesters.

More than 200 people were arrested, with the bulk of arrests occurring Nov. 20 and 21 when trade ministers from 34 nations met at the Hotel Inter-Continental.

Miami Police Chief John Timoney said police, confronted by protesters throwing rocks, bottles and other objects, ``showed remarkable restraint."

But in the weeks since the trade summit, police have come under intense scrutiny for their treatment of protesters, including complaints of dubious arrests, barring people from attending a rally, shooting some unarmed protesters with pepper-spray balls and rubber bullets, and destroying personal property, such as cellphones.

"The main complaints seem to be unprovoked acts of violence by the Miami Police Department and other law enforcement against people who were peaceably assembled," said Heidi Boghosian, executive director of the National Lawyers Guild, a New York-based liberal organization that deployed legal observers during the summit. ``They were not allowed to do what they were allowed to do because they were met with force, such as Tasers, rubber bullets and tear gas."

Alejandro Vilarello, attorney for the city of Miami, declined to comment about the anticipated civil rights claims because no suits have been filed. But he defended the police department's actions as reasonable given the violence they faced from some protesters.

SIMILAR CLAIMS

The lawsuits stemming from the FTAA, which are expected to be filed early next year, will likely mirror similar claims filed in the aftermath of other major international summits or high-

profile events, including most infamously the World Trade Organization meeting in Seattle four years ago.

The city of Seattle has paid \$500,000 to settle 14 civil rights suits that alleged excessive force and unlawful arrests during clashes between protesters and police. Seattle officials said they settled to avoid trials and potentially larger damage amounts.

Six other lawsuits are pending, including a class-action case claiming the city violated the constitutional rights of demonstrators by creating a "no-protest zone" that barred them from a 25-block area surrounding the WTO meeting site.

Following major confrontations, Seattle officials were criticized for poor preparation. Other police agencies, including Miami's, have traveled to cities hosting major gatherings to study their security techniques. Protesters are already eyeing Boston, site of the Democratic National Convention, and New York, which will host the Republican National Convention.

For the groups preparing civil rights complaints in Miami, seeking financial damages from the city is not necessarily their ultimate goal.

They say their real intent is to try to prevent what they termed a "preemptive" police strike against demonstrators from happening again, and to ensure that other cities do not use Miami's policing strategy to crack down on future mass demonstrations.

"What you'll see is an emerging picture of a police state [in Miami]," said Lida Rodriguez-Taseff, president of the ACLU's Miami chapter. "That picture is going to move people to ask, 'Do we want to live in this kind of society?'"

The groups' civil rights complaints could be filed as individual or class-action cases in Miami federal court. Each case is likely to allege violations of First Amendment rights of free speech and assembly, Fourth Amendment protections against unreasonable search and seizure or Fifth Amendment guarantees against depriving a person of their property without due process.

The ACLU's Miami chapter and the AFL-CIO's Washington office have joined forces in preparing some cases. The National Lawyers Guild is gathering complaints along with Miami Activist Defense, an ad hoc network of activists, attorneys and law students who attended the FTAA demonstrations.

They plan to base their cases on the testimony of victims, witnesses, and videotapes that allegedly depict aggressive police action.

The AFL-CIO is particularly incensed about the way police screened people trying to attend the union's rally at the Bayfront Park Amphitheater on Nov. 20, the first day of formal trade discussions.

"The police picked and chose who could enter our own permitted rally – if you were young and didn't look like a unionist, you often were turned away," said Guillermo Meneses, spokesman for the AFL-CIO.

A federal civil rights claim will bar the city of Miami, its police department and other law enforcement agencies from mounting a sovereign immunity defense. Governments typically cite sovereign immunity as a defense to block most suits, but that shield cannot be used in civil rights cases.

POSSIBLE ARGUMENTS

To defend themselves, police, under civil rights laws, would be able to argue that they acted in "good faith" and had "probable cause" for their actions. Miami officials could claim they mounted a formidable force for the FTAA meeting because of violence at the WTO summit in Seattle and at a meeting of the World Bank and International Monetary Fund in Washington in 2002.

Miami police can also argue they had information that anarchists and other protesters were coming to Miami intending to use violence to disrupt the summit. In addition, police have said they received intelligence indicating that some protesters were carrying rocks, slingshots and balloons filled with urine.

Vilarello, the city attorney, said Miami would be liable for any civil rights judgments up to \$300,000. The city has insurance for claims exceeding \$300,000, he added.

Despite complaints that law enforcement officials unleashed an intimidating and overly large police presence, the success of any civil rights claims will depend on the strength of the evidence, constitutional law experts said.

Peaceful protesters who claim they were shot with rubber bullets or pepper spray might have stronger claims, because they could make a persuasive argument that police used indiscriminate force, said Donald Jones, a constitutional law professor at the University of Miami Law School.

But others who claim they were stopped on the street and arrested for no apparent reason might have weaker claims, because police can offer justifications for searching them, such as suspicions that they were carrying rocks to hurl at officers.

"It will be extremely difficult to prevail in these civil rights claims," Jones said. "But because of the pattern of some egregious actions, the police will have some serious explaining to do."