

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

EASTERN DISTRICT OF NEW YORK  
UNITED STATES OF AMERICA,  
Plaintiff,

and

JANET A. CALDERO, *et al.*  
Plaintiff-Intervenors

-against-

NEW YORK CITY BOARD OF EDUCATION, *et al.*,  
Defendants,

and

JOHN BRENNAN, *et al.*  
Defendant-Intervenors.

Civ. No. 96-0374  
(RML)

Declaration of Janet A. Caldero in  
Support of Motion to Intervene

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JOHN BRENNAN, *et al.*  
Plaintiffs

-against-

JOHN ASHCROFT, *et al.*,  
Defendants

and

JANET A. CALDERO, *et al.*  
Defendant-Intervenors

Civ. No. 02-0256  
(FB) (RML)

I, Janet Caldero, certify under penalty of perjury that to the best of my knowledge and recollection, the following is true and correct:

1. I am one of the individuals who benefited from the settlement agreement in *United States v. New York City Board of Education*. I am submitting this Declaration in support of the motion to intervene in that case and in *Brennan v. Ashcroft* being filed by Janet Caldero *et al.*

2. I reside at 157-38 Tenth Avenue, Beechhurst, New York, and am employed at P.S. 199Q by the New York City Department of Education as a Custodian Engineer Level I. Custodian Engineers Level I were formerly called Custodians, Custodian Engineers Level II were formerly called Custodian Engineers, and the Department of Education was formerly called the Board of Education. Throughout this Declaration, I will refer to the position of Custodian Engineer Level I as “Custodian” and Custodian Engineer Level II as “Custodian Engineer.” I will refer to the Department of Education as the “Board of Education.”

3. Prior to becoming a Custodian, I was employed by a Custodian Engineer as a handyperson/secretary. The Custodian Engineer for whom I worked trained me in the skills necessary to become a Custodian. I was lucky to find this position; many Custodians will not hire or train women because they don’t believe women can do the work. This makes it difficult for women to gain the requisite skills to become a Custodian or to gain the inside connections to hear about available positions.

4. On or about November 9, 1992, I became a provisional Custodian. Custodians supervise and are responsible for the physical operation, maintenance, repair, custodial upkeep and care of a public school building and its immediate grounds. I sought the job as a provisional Custodian because I was told that the New York City Board of Education was seeking to hire women and minorities as provisional Custodians because it was

under investigation for race and sex discrimination by the United States Department of Justice. I was one of the first three women hired as provisional Custodians.

5. I was lucky that I heard that the Board of Education was seeking to hire provisional Custodians, as the positions were not widely publicized, and recruiting for the positions was done primarily by word-of-mouth.

6. On or about March 23, 1997, I became a permanent Custodian. I was one of only a few women hired as permanent Custodians prior to the implementation of the settlement agreement in *United States v. New York City Board of Education*.

7. Under the settlement agreement, I received approximately three years and ten months of retroactive seniority.

8. The number of years in which you have participated in the retirement system determines the ultimate amount of the pension you receive. For instance, an individual who has made contributions to the system for twenty years will receive a pension equivalent to 40 percent of her salary upon retirement, while an individual who has made contributions for twenty-five years will receive a pension equivalent to 50 percent of her salary on retirement.

9. Under the settlement agreement, I was permitted to “buy back” time in the retirement system by making contributions to the system equal to those I would have made had I been employed as a Custodian for the three years and ten months for which I received retroactive seniority. I “bought back” time equivalent to my retroactive seniority award in this way.

10. Based on my “buy back” under the settlement agreement, I will be able to retire at age 62 with a larger pension than I otherwise would. I have planned my future on the basis of the retroactive seniority award I received under the settlement agreement.

11. I am currently working in the building in which I was placed when I received permanent employment status in 1997. When the next transfer list is circulated, however, I plan to bid to transfer to a new building. Whether I am successful in this bid may turn on whether I have more seniority relative to other bidders.

12. My building placement will determine my salary, since salary is based on the square footage of the building for which a Custodian has responsibility.

13. Throughout the litigation of *United States v. New York City Board of Education*, I cooperated with and assisted the Department of Justice attorneys working on the case. I understood them to be working on behalf of my interests. I directed all questions about the case or information that I thought would be relevant to the case to them.

14. On or about July 29, 2002, I learned that the Department of Justice was no longer defending my award of retroactive seniority or the awards made to most of the other individuals under the settlement agreement, including almost all the women. No one from the Department of Justice or the Board of Education told me of this development. I was informed of this by Emily Martin, staff attorney for the ACLU Women’s Rights Project.

15. Immediately after speaking to Ms. Martin, on or about July 29, 2002, I called Charles Leggott, counsel for the United States, to ask him whether it was true that the Department of Justice was no longer defending my interests or the interests of other

individuals like me. He said this was not true and that the Department of Justice was defending the entire settlement agreement.

16. On or about July 29, 2002, I then spoke again to Ms. Martin and asked her if she had any proof of the Department of Justice's change of position, since Mr. Leggott had denied that any change had occurred. Ms. Martin provided me with a copy of the United States' Memorandum in Partial Opposition to Plaintiffs' Motion for a Preliminary Injunction, which clearly indicated that the United States was opposing the motion for a preliminary injunction that would strip beneficiaries under the settlement agreement of their awards only as to a small portion of the beneficiaries. I was not included in this group.

17. I then again called Mr. Leggott and told him about the papers that I had received and questioned him as to why I was omitted. He did not respond to my questions.

18. Later that day, John Gadzichowski, counsel for the Department of Justice, called me at home. He told me that the Court of Appeals had reversed the settlement agreement in *United States v. New York City Board of Education*, and that there was no more settlement agreement. He also stated that at this time the Department of Justice did not feel there was sufficient evidence to defend my interests or the interests of thirty-one other beneficiaries under the settlement agreement.

Executed this 17th day of October, 2002, in New York, New York.

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Janet A. Caldero