

**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 Dawn Ellis 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, Dawn Ellis, 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 98-06 163rd Avenue, Howard Beach, New York, and am employed at P.S. 82Q 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. From 1989 to 1993, prior to becoming a Custodian, I was employed and directly supervised by a Custodian Engineer as a handyman. In 1993, I also began work as a substitute teacher employed by the Board of Education.

4. On December 3, 1993, 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 learned about the job opening for provisional Custodians because my father, who was employed by the Board of Education as a permanent Custodian Engineer, told me that the New York City Board of Education was seeking to hire women and minorities as provisional Custodians. He told me that this was because it was under investigation for sex and race discrimination by the United States Department of Justice.

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. Under the settlement agreement in *United States v. New York City Board of Education*, implemented in February of 2000, I received permanent employment status as a Custodian. I also received seniority retroactive to December 3, 1993, my start date as a provisional Custodian. This amounted to a retroactive seniority award of approximately six years and three months.

7. As a permanent Custodian, I enjoy civil service protections that I did not have as a provisional Custodian. I am also eligible for temporary care assignments, in which I temporarily take care of other buildings that lack a Custodian and earn a portion of the Custodian's salary for that building. Since receiving permanent status I have received one temporary care assignment and have thus been able to supplement my salary. I will seek further temporary care assignments in the future. As a permanent Custodian, I am eligible to bid to transfer to other larger schools that offer higher salaries. I also accrue seniority, which enhances my competitiveness in the bidding process, since when two or more individuals with the same job approval ratings bid for transfer to a single school, placement at the school is determined by seniority.

8. I am currently working in the building in which I was placed when I received permanent employment status in 2000. I have made bids to transfer to other school buildings, but so far have not been successful in these bids. When the next transfer list is circulated, I will again bid to transfer to a new building. Whether this bid is successful may turn on whether I have more seniority relative to other bidders.

9. Before I received permanent employment status under the settlement agreement, I took and passed the civil service examination to become a permanent Custodian. Thus, I was placed on the list of individuals eligible to be called for permanent employment as a Custodian. After I received permanent employment status under the settlement agreement, many individuals were called off the list on which I was included and offered permanent positions as Custodians, including all individuals who, like me, held refrigeration licenses. Nevertheless, I was not called off the list.

10. At the time, I assumed that this was because I had already received permanent employment status under the settlement agreement, and did not investigate the question further since I had already secured permanent status. If I had not received permanent seniority under the settlement agreement, I believe I likely would have soon thereafter because I would have been called off the list of individuals eligible for permanent appointment as a result of their examination scores. Because I received permanent employment status under the settlement agreement, I missed the opportunity to obtain permanent employment status in this way.

11. Were I now to lose my permanent employment status, I do not know whether I would be permitted to remain employed as a Custodian. My understanding is that civil service laws do not permit provisional Custodians to be appointed when there is a current eligibility list of individuals qualified for permanent appointment. Such a list exists today. If I lose my permanent status, I would presumably revert to provisional status. But, because provisional status employees cannot be appointed if an eligibility list of potential permanent status employees exists, I could be fired. It is perhaps possible that I could be given permanent status based on my placement on the eligibility list, but even

if that were to occur, I would lose seniority and thus would be less able to compete for transfers to larger buildings with higher salaries.

12. 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.

13. In August 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 Janet Caldero, a Custodian who had also received benefits under the settlement agreement.

Executed this 16th day of October, 2002, in New York, New York.

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Dawn Ellis