

**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 Martha Chellemi in  
Support of Motion to Intervene

---

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, Martha Chellemi, 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 *Brennan v. Ashcroft* being filed by Janet Caldero *et al.*

2. I reside at 1772 East 33rd Street in Brooklyn and am employed at P.S. 108K 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. For five to six years prior to becoming a Custodian, I was employed by a Custodian as a foreman.

4. On November 7, 1994, 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 from other Custodians on the job. They stated that the New York City Board of Education was seeking to hire women and minorities 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. 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 November 7, 1994, my start date as a provisional Custodian. This amounted to a retroactive seniority award of approximately five years and four months.

7. As a permanent Custodian, I know that I cannot be moved from the school where I work into another school. Provisional Custodians are often moved from school to school; as a result, their salaries vary and they find it more difficult to do their jobs because the constant moves undermine their authority. 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 a single school, placement at the school is determined by seniority.

8. 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.

9. 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 hired 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. Thus, I fear that if I lost the permanent employment status I received under the settlement agreement, I could lose my job. Alternatively, I could perhaps eventually be called off the eligibility list and given permanent status, 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.

10. Based on my salary as a permanent Custodian, I have purchased a house and have brought my mother to live with me. If I were to lose my permanent employment status, I believe that I might lose my home and my ability to care for my mother.

11. 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.

12. In early August 2002, I learned that the Department of Justice was no longer defending my award of retroactive seniority and permanent employment status or the awards made to others under the 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.

13. After learning of the change in the Department of Justice's position, I called Charles Leggott, counsel for the United States. I told him that I understood that I had been taken off the list of individuals whose awards under the settlement agreement were being defended by the Department of Justice. He asked me who told me this. I stated that it did not matter who had told me this and that I simply wanted to know whether it was true. He acknowledged that it was true that I had been taken off the list. I asked what the effects of this would be. He stated that nobody knew what would ultimately happen.

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

---

Martha Chellemi