

**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 Sandra Morton 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, Sandra Morton, 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 17 State Road, Rockaway Point, New York, and am employed at P.S. 217K 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, from 1992 to 1995, I was employed by a Custodian as a secretary/fireman.

4. On or about January 30, 1995, 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 the Custodian for whom I worked told me that the position was available. I was told that the New York City Board of Education was seeking women and minorities to fill these jobs because it was being investigated 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 January 30, 1995, my start date as a provisional Custodian. This amounted to a retroactive seniority award of approximately five years.

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 two temporary care assignments and have thus been able to supplement my salary. I will seek further temporary care assignments in the future.

8. As a permanent Custodian, I am eligible to bid to transfer to other public school buildings. My building placement determines my salary, since salary is based on the square footage of the building for which a Custodian has responsibility. As a permanent Custodian, I also accrue seniority, which enhances my competitiveness in the bidding process, because when two or more individuals with the same job approval ratings bid for a single school, placement at the school is determined by seniority.

9. Since I gained permanent employment status, I have successfully bid to transfer to a larger school and have thus increased my salary. Other Custodians also bid to transfer to this school, and my seniority was the deciding factor in obtaining this transfer. Eventually, I plan to bid for additional transfers. Whether I am successful in these future bids may turn on whether I have more seniority relative to other bidders.

10. 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. In March 2002, I was called off the list and offered permanent employment status, effective May 2002. Since I had already received permanent employment status under the settlement agreement, I declined this offer.

11. Had I not received permanent employment status under the settlement agreement, I would have accepted this offer. Had I known that the Department of Justice was no longer defending my award under the settlement agreement, I might have accepted this offer.

12. 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.

13. Were I now to lose my permanent employment status, I could ask to have my name put back on the current eligibility list for permanent employment as a Custodian. However, my name would be placed at the bottom of this list. With this placement, I do not believe I would ever be called off this list for permanent employment. As a result, because I declined permanent employment status when it was offered to me in March 2002, I do not believe that I could regain permanent employment as a Custodian.

14. 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.

15. 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.

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

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Sandra Morton