

**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 Frank Valdez 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, Frank Valdez, 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 876 East 167th Street, Bronx, New York, and am employed at P.S. 26K by the New York City Department of Education as a Custodian Engineer Level II. 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. On or about February 12, 1996, I became a provisional Custodian Engineer. Custodian Engineers 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 Engineer because a friend told me that the New York City Board of Education was hiring provisional Custodian Engineers.

4. I was lucky that I heard that the Board of Education was seeking to hire provisional Custodian Engineers, as recruiting for the positions was done primarily by word-of-mouth.

5. 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 Engineer. I also received seniority retroactive to February 12, 1996, my start date as a provisional Custodian Engineer. This amounted to a retroactive seniority award of approximately four years.

6. As a permanent Custodian Engineer, I know that I cannot be moved from the school where I work into another school. Provisional Custodian Engineers 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. I was moved several times before I received permanent employment status.

7. As a permanent Custodian Engineer, I enjoy civil service protections that I did not have as a provisional Custodian Engineer.

8. As a permanent Custodian Engineer, I am also eligible for temporary care assignments, in which I temporarily take care of other buildings that lack a Custodian Engineer and earn a portion of the Custodian Engineer's salary for that building. Since receiving permanent status I have received approximately four temporary care assignments and have thus been able to supplement my salary. I will seek further temporary care assignments in the future.

9. As a permanent Custodian Engineer, 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 Engineer has responsibility. As a permanent Custodian Engineer, I also accrue seniority, which enhances my competitiveness in the bidding process, because when two or more individuals with the same job performance ratings bid for a single school, placement at the school is determined by seniority.

10. Since I gained permanent employment status, I have successfully bid to transfer to a larger school and have thus increased my salary. I presume that other Custodian Engineers also bid to transfer to this school, and my seniority may have been 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.

11. Before I received permanent employment status under the settlement agreement, I took and passed the civil service examination to become a permanent Custodian Engineer. Thus, I was placed on the list of individuals eligible to be called for permanent employment as a Custodian Engineer. In approximately March or April of 2002, I was called off the list and offered permanent employment status. Since I had already received permanent employment status under the settlement agreement, I declined this offer.

12. 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 also would have accepted this offer.

13. Since learning that the Department of Justice is no longer defending my award under the settlement agreement, I have asked to be reinstated on the list of individuals eligible to be called for permanent employment as Custodian Engineers. I understand I will be placed on the bottom of this list. I do not know whether I will ever be called off the list again.

14. Even if I were to be called off the list again, I would lose the seniority that I have gained as a permanent Custodian Engineer and that I would have gained if I had accepted the permanent appointment offer in the spring of this year.

15. 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.

16. In 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 most of the other individuals under the settlement agreement. 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.

Frank Valdez