

**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 Charmaine DiDonato 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, Charmaine DiDonato, 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 64-58 60th Avenue in Maspeth, New York, and am employed at P.S. 91Q by the New York City Board of Education as a Level I Custodian Engineer. Level I Custodian Engineers were formerly called Custodians, and Level II Custodian Engineers were formerly called Custodian Engineers. Throughout this Declaration, I will refer to the position of Level I Custodian Engineer as “Custodian” and Level II Custodian Engineer as “Custodian Engineer.”

3. Prior to becoming a Custodian, I was employed by a Custodian in a New York City public school as a secretary/handyperson.

4. On December 12, 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 heard about the job opening for provisional Custodians from the Custodian who employed me and from friends. I understood that the Board of Education was specifically seeking to hire women and minorities because it was under investigation for race and sex discrimination by the Department of Justice.

5. I was lucky to hear that the Board of Education was seeking to hire provisional Custodians, as 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 23, 1989. This amounted to just over eleven years of seniority. I “bought back” four years and three weeks in my

pension as a result of this award, which will allow me to retire earlier than I otherwise would.

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 I will seek more in the future.

8. 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. Since I became a permanent Custodian, I have successfully bid to transfer to a larger school and thus have increased my salary. I understand that other individuals also bid for this school, and it is possible that I won the transfer based on my seniority. I expect to bid for transfers again in the future.

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. I did well on the exam and thus was initially

placed high on the list. However, as a result of the settlement agreement in *United States v. New York City Board of Education*, this list was reordered randomly and my placement on the new reordered list was very low.

10. 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. Because I am so low on this new reordered list, I do not believe I will ever be called off the list and receive permanent employment status in this way. Thus, I fear that if I lost the permanent employment status I received under the settlement agreement, I could lose my job.

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 participated in meetings with the attorneys and directed all questions about the case to them.

12. 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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Charmaine DiDonato