

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 70-1069

UNITED STATES OF AMERICA,

Plaintiff,

v.

BOARD OF EDUCATION OF HENDRY
COUNTY,

Defendant.

**JOINT MOTION FOR DECLARATION OF PARTIAL UNITARY STATUS
AND FOR APPROVAL OF STIPULATION REGARDING FACULTY AND STAFF
RECRUITING AND STUDENT DISCIPLINE**

Plaintiff, the United States of America (the "United States"), and Defendant, Board of Education of Hendry County, also known as the School Board of Hendry County (the "District") (collectively, the "Parties") respectfully file this Joint Motion for Declaration of Partial Unitary Status and for Approval of Stipulation Regarding Faculty and Staff Recruiting and Student Discipline. As grounds for this motion, the Parties state the following:

Procedural History

1. The United States initiated this lawsuit against the District on July 8, 1970, alleging that the District continued to operate a dual school system based on race.¹ On July 31, 1970, the Court issued a preliminary order that required conversion of the District from a dual to a unitary system in accordance with the requirements set forth in *Singleton v. Jackson Municipal Separate*

¹ The original complaint also named St. Lucie County School District as a defendant. The Court granted the St. Lucie County School District's motion for unitary status and dismissed the case on September 10, 1997.

School District, 419 F.2d 1211 (5th Cir. 1969), but reserved ruling on student assignment. The Court adopted the District's student assignment plan on August 29, 1970, and issued a subsequent opinion and order on August 4, 1971 (the "August 1971 Order"), directing the District to make certain modifications to the plan.²

2. On January 13, 1975, the Court entered an order (the "January 1975 Order") that dissolved the August 1971 Order and permanently enjoined the District from "operating a dual system of racially identifiable schools."³ January 1975 Order at 1. The Court also ordered the District to continue to: (1) take no action to segregate students or faculty between or within schools on the basis of race, color, or national origin; (2) ensure that staff and administrators are "hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated" without regard to race, color, or national origin; (3) ensure bus transportation is provided on a non-discriminatory basis; (4) ensure that all school construction, consolidation, and site selection are done to prevent the recurrence of a dual system; and (5) ensure that all inter-district transfers are permitted on a non-discriminatory basis, except that they will not be permitted "where the cumulative effect will

² On October 29, 1971, the Court granted a motion to intervene filed by the Harlem Civic Improvement Association and Janet Powell Dixon, mother and next friend of Helen and Walter Dixon. The United States and District are not aware of any involvement by the plaintiff-intervenors in the case since the mid-1970s. Further, the United States and the District have confirmed that counsel of record for the Harlem Civic Improvement Association and Ms. Dixon (Florida Rural Legal Services and W. George Allen, respectively) no longer represent the plaintiff-intervenors. The United States and the District also have reason to believe that the Harlem Civic Improvement Association no longer exists. For these and other reasons, the Parties believe the plaintiff-intervenors no longer have a legal interest in the case and that the United States and the District are the proper parties to this motion and the only remaining parties in this case.

³ The Court concluded the District had been "operating a unitary school system for the past three years." The Court did not expressly determine that the District had achieved "unitary status" in the areas of student assignment, faculty and staff assignment, extracurricular activities, facilities, and transportation. See *Green v. Sch. Bd. of New Kent Cty.*, 391 U.S. 430, 435 (1968).

reduce desegregation” in Hendry or the other school district. *Id.* at 2-3. The Court retained jurisdiction to enforce the permanent injunction.

3. Since 2007, the United States has actively monitored the District and issued several requests for information to the District, most recently on June 11, 2015. These requests consisted of questions targeted at gathering data and other information related to the *Green* factors and the District’s affirmative desegregation obligations. The District has responded to each of the United States’ requests for information, and the United States has fully and carefully reviewed and analyzed these responses.

4. Representatives from the United States visited the District in February 2008 and May 2016. During the visits, the representatives toured several elementary, middle, and high schools, and interviewed relevant school and district personnel.

Legal Standard

5. To obtain a declaration of unitary status, the District must show that its schools have: (1) fully and satisfactorily complied with the Court’s decrees for a reasonable period of time; (2) eliminated the vestiges of prior *de jure* discrimination to the extent practicable; and (3) demonstrated a good-faith commitment to the whole of the Court’s decrees and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance. *See Missouri v. Jenkins*, 515 U.S. 70, 87-89 (1995); *Freeman v. Pitts*, 503 U.S. 467, 491-92, 498 (1992); *Bd. of Educ. of Oklahoma City Pub. Sch. v. Dowell*, 498 U.S. 237, 248-50 (1991).

6. The Supreme Court has identified six areas, commonly known as the “*Green* factors,” which must be addressed as part of the determination of whether a school district has fulfilled its duties and eliminated vestiges of the prior dual system to the extent practicable: (1) student assignment; (2) faculty; (3) staff; (4) transportation; (5) extracurricular activities; and (6)

facilities. *Green v. Sch. Bd. of New Kent Cty.*, 391 U.S. 430, 435 (1968); see *Manning ex rel. Manning v. Sch. Bd. of Hillsborough Cty.*, 244 F.3d 927, 942 (11th Cir. 2001) (stating that “for a district court to determine whether the vestiges of discrimination have been eliminated to the extent practicable, it must examine . . . the *Green* factors”). The Supreme Court also has approved consideration of other indicia, such as “quality of education,” as important factors for determining whether the District has fulfilled its desegregation obligations. *Freeman*, 503 U.S. at 492-93.

7. A district court may allow partial or incremental dismissal of the desegregation case before full compliance has been achieved in every area of school operations, thereby retaining jurisdiction over those areas not yet in full compliance and terminating jurisdiction over those areas in which compliance is found. *Freeman*, 503 U.S. at 490-91.

Unitary Status with Respect to Student Assignment Between Schools, Transportation, Extracurricular Activities, and Facilities

8. During the 1969-70 school year, the District operated 5 schools and enrolled approximately 3,094 students (64.3% white, 25.3% black, and 10.4% other). One of the five schools, Harlem Academy, was a *de jure* black school.

9. For the 2015-16 school year, the District enrolled 7,127 students in twelve schools, including two youth development academies. The District’s overall enrollment is 15% black (1,042 students), 20% white (1,452 students), and 65% other (4,633 students). The following chart summarizes the enrollment at each school in the LaBelle and Clewiston communities during the 2015-16 school year:

School	Grades	Black	White	Other	Total
Westside ES	PK-5	127 (21%)	98 (17%)	366 (62%)	591
Eastside ES	PK-5	166 (29%)	73 (13%)	338 (58%)	577
Central ES	PK-5	134 (22%)	114 (19%)	357 (59%)	605
Clewiston MS	6-8	177 (25%)	122 (17%)	414 (58%)	713
Clewiston HS	9-12	218 (25%)	195 (22%)	470 (53%)	883

Clewiston YDA	6-12	18 (62%)	4 (14%)	7 (24%)	29
Clewiston Totals		840 (25%)	606 (18%)	1,952 (57%)	3,398

LaBelle ES	PK-5	21 (4%)	95 (16%)	475 (80%)	591
Country Oaks ES	PK-5	64 (8%)	143 (18%)	600 (74%)	807
Upthegrove ES	PK-5	19 (4%)	135 (28%)	324 (68%)	478
LaBelle MS	6-8	41 (5%)	171 (23%)	542 (72%)	754
LaBelle HS	9-12	53 (5%)	289 (28%)	707 (67%)	1,049
LaBelle YDA	6-12	3 (12%)	5 (19%)	18 (69%)	26
LaBelle Totals		275 (7%)	764 (21%)	2,666 (72%)	3,705
"ESE/Hospital Homebound"	PK-12	1 (4%)	8 (33%)	15 (63%)	24
TOTAL		1,042 (15%)	1,452 (20%)	4,633 (65%)	7,127

10. Despite experiencing significant growth and changing demographics since the inception of the case, the District has maintained a desegregated student enrollment that reflects the overall racial composition of the District. During the 2015-16 school year, all elementary, middle, and high schools fell within +/- 15% of the Districtwide average based on the percentage of black and white students enrolled in Clewiston and LaBelle schools.

11. The Parties further stipulate that:

- a. The District has granted and denied student transfers in compliance with the District's transfer policy without discriminating on the basis of race. These transfers do not have a negative effect on desegregation in the District's schools.
- b. The District maintains non-discriminatory policies and practices with respect to transportation and provides transportation to students in a non-segregative and non-discriminatory manner.

- c. The District has not constructed or consolidated schools in a manner that would interfere with its desegregation obligations and does not have any new consolidation or construction plans in the near future.
- d. The District offers a wide variety of student activities, and race is not a consideration for participation in those activities. Student participation in sports, student government, clubs, and extracurricular and co-curricular activities reflects that activities are available to all students in the District regardless of race.

12. For the reasons stated above, the Parties believe the District has eliminated the vestiges of the prior *de jure* segregation to the extent practicable and achieved unitary status in the areas of: (1) student assignment (between schools); (2) transportation; (3) extracurricular activities; and (4) facilities.

13. For similar reasons, the Parties agree that the District has satisfied the related requirements in the permanent injunction in the January 1975 Order. Specifically, the District has not taken action "which tends to segregate students" by school "on the basis of race, color, or national origin"; has assigned bus routes and students to buses in a non-segregated and non-discriminatory manner; has performed school construction, consolidation, and site selection in a manner that will prevent the recurrence of a dual school structure; and has permitted transfers on a non-discriminatory basis and in a manner that does not cumulatively reduce desegregation in the affected districts.

14. Accordingly, the Parties request that the Court withdraw its supervision and dissolve the permanent injunction with respect to the four aforementioned areas in Paragraph 12.

Plan to Achieve Unitary Status in the Area of Faculty and Staff Recruiting

15. In *Singleton v. Jackson Municipal Separate School District*, the Court mandated that “principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students.” 419 F.2d 1211, 1217-18 (5th Cir. 1969) (en banc), *rev’d in part on other grounds sub nom. Carter v. West Feliciana Parish Sch. Bd.*, 396 U.S. 290 (1970).

16. Faculty and staff are assigned to schools throughout the District in an equitable manner. For example, for the 2015-16 school year, only two schools had ratios of black or white teachers outside the +/- 15% range relative to the District-wide percentages, and none was outside the +/-20% range.

17. The District has experienced challenges with minority recruiting and hiring over the last several years. Most recently, in the 2015-16 school year, black faculty constituted only 6% of the District’s total faculty personnel and there were no black Principals. Among other certified personnel, only 8.3% were black, all four of whom were in one school. Among non-certified staff, 23.6% were black, but those employees were disproportionately clustered in certain schools (e.g., 84.6% of black high school staff were at Clewiston High School and 100% of black middle school staff were at Clewiston Middle School).

18. The District has been taking steps to recruit more black administrators, instructional staff, and non-instructional staff. However, the Parties agree that more progress can be made in the area of minority recruitment. The District has agreed to develop and implement a Minority Recruiting Plan to ensure more effective recruitment.

19. Pursuant to the Plan:

- a. The District will reach out to its contacts at student placement offices at universities in Florida and throughout the United States, including historically black colleges and universities such as Bethune Cookman University, Florida A&M University, Edward Waters College, and Florida Memorial University, to identify and recruit minority candidates.
- b. The District will continue to make recruiting visits to college campuses and attend job fairs to recruit minority teachers.
- c. The District will continue to advertise and post job vacancies on the District website, Appletrac, and other sources and publications that reach diverse populations.
- d. The District will continue to implement its initiative to recruit more “homegrown” teachers, including its tuition reimbursement program.
- e. Beginning with the 2016-17 school year, the District will attend functions, career fairs, and promotional events coordinated by the Florida Fund for Minority Teachers.
- f. By January 1, 2017, the District will establish a Minority Recruiting Committee comprised of diverse administrators, instructional staff, and non-instructional staff who will meet with the Superintendent to discuss ways to increase minority recruitment and will participate in recruitment events. Committee members will assist with one or more recruiting visits to college campuses or job fairs.
- g. The District will encourage all principals to interview a diverse pool of applicants for all open positions and make available information about applicants’ race, if available.

- h. The District will monitor the diversity of faculty, administrators, instructional staff, and non-instructional staff at each of its schools at the end of each school year.
- i. The District will conduct teacher satisfaction surveys at the end of each school year to inform its retention efforts.
- j. The District will, for teachers leaving the school district, conduct exit surveys that, *inter alia*, will inquire about the teacher's reason for leaving.

20. The Parties agree that full compliance with the Plan through June 30, 2019, should support a finding that the District has achieved unitary status in the area of faculty and staff recruitment.

21. The Parties therefore request that the Court approve the Joint Stipulation, which will govern the District's faculty and staff recruitment (and student discipline as set forth below) through the 2018-19 school year. A copy of the joint stipulation is attached as Ex. 1.

Plan to Achieve Unitary Status in the Area of Student Discipline (Within School Segregation)

22. The Parties agree that more progress can be made in the area of within school segregation related to student discipline.

23. The question of whether disciplinary measures have been applied in a non-discriminatory manner was first raised as an issue early in this case. On May 24, 1972, this Court dismissed a separate claim by Plaintiff-Intervenors in this action seeking, *inter alia*, "[t]hat the defendants be ordered to refrain from discriminatory suspension and expulsions of Black students" on the grounds that this claim was properly before the Court in connection with the desegregation case. May 24, 1972 Order ("May 1972 Order"), at 2.

24. As this Court noted in its May 1972 Order, “[t]he purpose of retaining jurisdiction over [a desegregation case] is stated in *Lee v. Macon County Board of Education*, [455] F.2d [978] (5th Cir., February 4, 1972):

During this period, the parties will be free to seek such modifications of the desegregation order as appear justified in the light of changed conditions, new insights into the educational problems confronting the public schools, or later developments in the jurisprudence.

Stated differently, this Court has retained jurisdiction over the earlier filed case for the purpose of considering just the sort of claims the plaintiffs have made herein.” May 1972 Order, at 2-3.

25. In data supplied by the District covering the 2014-15 school year, there were notable disparities at several schools suggesting that black students were being punished at disproportionately high rates. For instance, at Central Elementary School, black students, who make up 22% of the student population, received 63.8% of in-school suspensions (“ISS”) and 58.7% of out-of-school suspensions (“OSS”). Similarly, at Clewiston Middle School, where black students make up 25% of the student population, they disproportionately received ISS for disruption (50.0%), disrespect/harassment (56.7%), defiance of school authority (45.5%), and unacceptable physical contact (48.0%). Black students at Clewiston Middle School were also more likely to receive OSS for certain infractions compared to white students who committed similar infractions. Among students at Clewiston High School receiving ISS, black students (25% of the school population) disproportionately received ISS for disruption (54%), unacceptable dress/clothing (75%), noncompliance with discipline (47.5%), unauthorized access (43.8%), and violation of common decency (57.1%). Moreover, 13.3% of all black students at Clewiston High School received at least one ISS for disruption during the school year.

26. Black students also are disproportionately represented at Clewiston Youth Development Academy.

27. The District reports that all schools are currently using a Positive Behavioral Support program and that schools are showing positive results since the program was implemented. The District acknowledges that improvement in the area of school discipline is still a work in progress.

28. The District agrees to develop and implement a Student Discipline Improvement Plan to address concerns in this area.

29. Pursuant to the Plan:

- a. The District will continue to implement a Positive Behavioral Support program and provide schools and their staff with the training and resources to improve school climate, teach school rules and social-emotional skills, reinforce positively appropriate behavior, and put in place early intervention strategies.
- b. No later than July 1, 2017, in addition to Positive Behavioral Support, the District will implement other evidence-based practices, such as restorative practices, and provide schools and their staff with the resources and support to further improve school climate, teach school rules and social-emotional skills, reinforce positively appropriate behavior, and put in place early intervention strategies.
- c. No later than July 1, 2017, the District will develop a mechanism for teachers and other school personnel to document intervention and support strategies prior to issuing an office disciplinary referral.
- d. Beginning in the spring of 2017, the District and individual schools, including the youth development academies, will collect and review discipline data, on at least a semester basis to: identify changes in rates of office disciplinary referrals and

discipline consequences issued (e.g., in-school suspension, out-of-school suspension, arrests) on the basis of race/ethnicity.

- e. Beginning in the spring of 2017, the District will conduct an annual end-of-year review of its youth development academies to evaluate the academies' effectiveness. The District's review will include: number of students referred and enrolled, disaggregated by race; discipline consequences (e.g., in-school suspension, out-of-school suspension, arrests) by infraction, disaggregated by race; average length of time spent at the alternative schools, disaggregated by race; and availability and quality of supports provided to students. If the District review identifies any concern, such as disparities in referrals or discipline rates by race, the District will work with the alternative school to develop and implement changes to address the concerns by the start of the next school year.

30. The Parties agree that full compliance with the Discipline Plan through June 30, 2019, should support a finding that the District has attained unitary status in the area of student discipline.

31. The Parties therefore request that the Court approve the Joint Stipulation, which will govern both faculty and staff recruitment and student discipline through the 2018-19 school year.

Conclusion

32. For the foregoing reasons, the Parties respectfully request that the Court grant the Parties' Joint Motion for Declaration of Partial Unitary Status and for Approval of Stipulation Regarding Faculty and Staff Recruiting and Student Discipline.

Dated: January 13, 2017

Respectfully submitted,

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Exhibit 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 70-1069

UNITED STATES OF AMERICA,

Plaintiff,

v.

BOARD OF EDUCATION OF HENDRY
COUNTY,

Defendant.

**STIPULATION REGARDING FACULTY AND STAFF RECRUITMENT AND
STUDENT DISCIPLINE**

Plaintiff, the United States of America (the "United States"), and Defendant, Board of Education of Hendry County, also known as the School Board of Hendry County (the "District") (collectively, the "Parties") hereby stipulate as follows:

Faculty/Staff Recruiting and Hiring

1. The District has taken steps to increase recruitment of minority (including, but not limited to, black) faculty and staff, including administrators, instructional staff, and non-instructional staff. The District will formalize this plan as the Minority Recruiting Plan and will implement this plan through at least the 2018-19 school year. In particular, the District commits to the following:
 - a. The District will reach out to its contacts at student placement offices at universities in Florida and throughout the United States, including historically black colleges and universities such as Bethune Cookman University, Florida A&M University, Edward

Waters College, and Florida Memorial University, to identify and recruit minority candidates.

- b. The District will continue to make recruiting visits to college campuses and attend job fairs to recruit minority teachers.
- c. The District will continue to advertise and post job vacancies on the District website, Appletrac, and other sources and publications that reach diverse populations.
- d. The District will continue to implement its initiative to recruit more “homegrown” teachers, including its tuition reimbursement program.
- e. Beginning with the 2016-17 school year, the District will attend functions, career fairs, and promotional events coordinated by the Florida Fund for Minority Teachers.
- f. By January 1, 2017, the District will establish a Minority Recruiting Committee comprised of diverse administrators, instructional staff, and non-instructional staff who will meet with the Superintendent to discuss ways to increase minority recruitment and will participate in recruitment events. Committee members will assist with one or more recruiting visits to college campuses or job fairs.
- g. The District will encourage all principals to interview a diverse pool of applicants for all open positions and make available information about applicants’ race, if available.
- h. The District will monitor the diversity of faculty, administrators, instructional staff, and non-instructional staff at each of its schools at the end of each school year.
- i. The District will conduct teacher satisfaction surveys at the end of each school year to inform its retention efforts.
- j. The District will, for teachers leaving the school district, conduct exit surveys that, *inter alia*, will inquire about the teacher’s reason for leaving.

Student Discipline

2. The District has taken steps to address racial disparities with respect to student discipline. The District will formalize this program as the Student Discipline Improvement Plan and will implement this plan through at least the 2018-19 school year. In particular, the District commits to the following:
 - a. The District will continue to implement a Positive Behavioral Support program and provide schools and their staff with the training and resources to improve school climate, teach school rules and social-emotional skills, reinforce positively appropriate behavior, and put in place early intervention strategies.
 - b. No later than July 1, 2017, in addition to Positive Behavioral Support, the District will implement other evidence-based practices, such as restorative practices, and provide schools and their staff with the resources and support to further improve school climate, teach school rules and social-emotional skills, reinforce positively appropriate behavior, and put in place early intervention strategies.
 - c. No later than July 1, 2017, the District will develop a mechanism for teachers and other school personnel to document intervention and support strategies prior to using an office disciplinary referral.
 - d. Beginning in the spring of 2017, the District and individual schools, including the youth development academies, will collect and review discipline data, on at least a semester basis to: identify changes in rates of office disciplinary referrals and discipline consequences issued (e.g., in-school suspension, out-of-school suspension, arrests) on the basis of race/ethnicity.

- e. Beginning in the spring of 2017, the District will conduct an annual end-of-year review of its youth development academies to evaluate the academies' effectiveness. The District's review will include: number of students referred and enrolled, disaggregated by race; discipline consequences (e.g., in-school suspension, out-of-school suspension, arrests) by infraction, disaggregated by race; average length of time spent at the alternative schools, disaggregated by race; and availability and quality of supports provided to students. If the District review identifies any concern, such as disparities in referrals or discipline rates by race, the District will work with the alternative school to develop and implement changes to address the concerns by the start of the next school year.
3. The District will report annually to the United States and the Court on the District's implementation of the stipulation terms. The District will provide copies of the report to the United States and the Court no later than September 1 of each year, and the report will be based on information and data collected through June 30 of the prior school year. Each report shall include:
- a. The total number and percentage of employees in each school by race/ethnicity and position in each of the following categories:
 - i. full-time teachers;
 - ii. part-time teachers;
 - iii. principals and assistant principals;
 - iv. other school-based certified personnel, including guidance counselors, librarians, etc. (identifying positions and indicating FTE at school facility if not full-time); and
 - v. non-certified staff.

- b. The total number and percentage of employees in the District by race/ethnicity and position in each of the following categories:
 - i. central office administrators and staff (identifying the position held by each);
 - ii. other certified personnel not assigned to the central office and not reported in response to any preceding request (e.g., curriculum supervisors, etc.); and
 - iii. other non-certified staff not reported in response to any preceding request.
- c. A list of all recruitment activities, including the names of all colleges, universities, and job fairs visited, the dates of those visits, the names, race, and job titles of the district representatives who visited, and any other activities or efforts, including advertisements, used to recruit minority administrators, instructional staff, and non-instructional staff.
- d. A list of the members of the Minority Recruiting Committee by position and race/ethnicity;
- e. A list of all full-time teacher, principal, assistant principal, and central office administrator vacancy announcements for that school year;
- f. For each vacancy, the number of applicants by race; the number of interviewed applicants by race; and the race of the hired applicant;
- g. A record, in a searchable, electronic format (e.g., Excel), for that school year that lists, by school, the total number of *individual* students by race/ethnicity and grade who were disciplined, separately reporting the number of students who received one or more: (i) in-school suspensions; (ii) out-of-school suspensions; (iii) expulsions; and (iv) placements in an alternative program; and indicate the infraction(s) for which the penalty was imposed.
- h. A summary of the District's annual review of the youth development academies, including whether any issues were identified and, if so, what changes will be made.

- i. A summary of the results of the teacher satisfaction surveys and exit surveys. Copies of the surveys will be made available upon request from the United States.

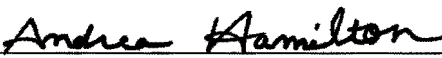
Final Termination

4. Absent evidence of racial discrimination in the District's faculty and staff recruitment or student discipline practices, the Parties agree that full and good faith compliance with the Plans through June 30, 2019 (i.e., the end of the 2018-19 school year) should support a finding that the District has attained unitary status in the areas of faculty, staff, and within school segregation related to student discipline and that the Court may withdraw its supervision and dissolve the permanent injunction with respect to these remaining areas. The District may move for full unitary status and dismissal no sooner than 90 days after submitting its September 1, 2019 report for the 2018-19 school year provided the report is complete and timely and the United States has not voiced any objection.

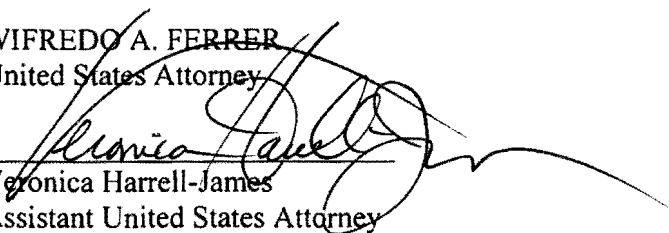
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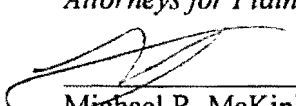

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Dated: January 13, 2017