



U.S. Department of Justice
Civil Division

Washington, D.C. 20530

ALW:RMLarizza
145-17-2731

Telephone:
(202) 514-4770

BY FEDERAL EXPRESS DELIVERY

October 31, 1994

Murray Harris, Clerk
United States District Court
211 West Ferguson
Room 309
Tyler, Texas 75702

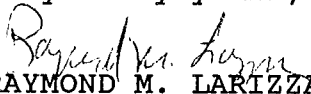
Re: Young, et al. v. Cisneros, et al.,
USDC E.D. Tx., C.A. No. P-80-8-CA

Dear Mr. Harris:

Enclosed for filing in the above-referenced action are the original and one copy of the Federal Defendants' Notice of Filing Proposed Final Remedy Order and the federal defendants' proposed Final Remedy Order.

Thank you for your assistance in this matter.

Very truly yours,


RAYMOND M. LARIZZA
Trial Attorney
Federal Programs Branch
Civil Division

cc: Honorable William Wayne Justice
Professor Francis E. McGovern
Michael M. Daniel

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

| | | |
|----------------------------|---|------------------|
| LUCILLE YOUNG, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | P-80-8-CA |
| HENRY G. CISNEROS, et al., |) | |
| |) | |
| Defendants. |) | |

FEDERAL DEFENDANTS' NOTICE OF
FILING PROPOSED FINAL REMEDY ORDER

In accordance with the order entered in the above-captioned action on September 30, 1994, the federal defendants hereby submit their proposed Final Remedy Order. In submitting this proposed Final Remedy Order, the federal defendants do not waive any argument or defense or appeal right concerning the appropriateness of, or the Court's authority to order, any of the remedial measures described in their proposed final remedy order, or in any other final order of the Court.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

RUTH HARRIS YEAGER
United States Attorney

Anne L. Weismann (Rind)
ANNE L. WEISMANN

OF COUNSEL:


RAYMOND M. LARIZZA

NELSON A. DIAZ
General Counsel

Attorneys, Department of Justice
Civil Division
Post Office Box 883
Washington, D.C. 20044
(202) 514-4770
Attorneys for Defendants

JOHN W. HEROLD
Associate General Counsel
for Litigation

STEPHEN A. CERNY
Trial Attorney

Attorneys, Department of Housing
and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 1994, I served the Federal Defendants' Notice of Filing Proposed Final Remedy Order and the federal defendants' proposed Final Remedy Order upon counsel for the plaintiffs by sending copies thereof, via Federal Express, to:

Michael M. Daniel
Michael M. Daniel, P.C.
3301 Elm Street
Dallas, Texas 75226-1637


RAYMOND M. LARIZZA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

| | | |
|----------------------------|---|------------------|
| LUCILLE YOUNG, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | P-80-8-CA |
| HENRY G. CISNEROS, et al., |) | |
| |) | |
| Defendants. |) | |
| <hr/> | | |

FINAL REMEDY ORDER

INTRODUCTION

The Order for Further Relief entered in this action on September 10, 1990, directed the Department of Housing and Urban Development (HUD) to submit an individual desegregation plan, or an assertion of unitary status, for each of the 70 public housing authorities (PHAs) in the class action area. By June 20, 1991, HUD had completed the filing of 58 individual desegregation plans and 12 assertions of unitary status. While the desegregation plans and unitary status assertions were pending for the approval of the Court, HUD undertook the implementation of the desegregation plans. On October 8, 1993, the new HUD Administration that came into office as a result of the 1992 presidential election, withdrew all of the desegregation plans and unitary status assertions that had been submitted by the predecessor Administration. With the Court's permission, HUD undertook a four-month review of the prior submissions. On February 4, 1994, HUD resubmitted the 58 original desegregation plans, and an individual amendment to each plan. In addition,

HUD prepared and submitted an individual desegregation plan amendment as the desegregation plan for each of the 12 public housing authorities (PHAs) for which the prior assertions of unitary status has been withdrawn. The individual plan amendments were drafted to appropriately reflect the remedial measures and principles embodied in HUD's Comprehensive East Texas Desegregation Plan.

The plaintiffs filed an opposition to HUD's amended desegregation plans and the parties engaged in discovery related to those plans. An evidentiary hearing examining the adequacy of the amended desegregation plans was conducted on April 18 - 19, and May 12, 1994. The parties subsequently filed their proposed findings of fact and conclusions of law.

Pursuant to court order, HUD submitted a proposed final remedy order. Pursuant to its authority to use program funds within its control to promote fair housing, HUD has agreed to voluntarily carry out the specific elements of the desegregation plans as drafted by HUD and submitted by HUD for approval by the Court. It is also HUD's position that most of the remedial measures included in the desegregation plans could not have been ordered by the Court over HUD's objection, either because the remedial measures are unrelated to curing the specific discriminatory acts for which HUD had previously been found liable or because the remedial measures are barred by principles of sovereign immunity and constitutional limitations restricting

the authority of a court to compel the expenditure of federal funds.¹

ORDER

Upon consideration of the record compiled during the above-described proceedings, and upon consideration of the arguments of the parties, the following final remedy order is hereby entered.

I. Approval Of Desegregation Plans

1. The individual desegregation plans and the individual desegregation plan amendments for each PHA submitted by HUD are hereby approved. As used herein, "individual desegregation plan" or "desegregation plan" includes both the original, individual desegregation plan filed by HUD for a particular PHA and the individual plan amendment filed by HUD for that PHA.

2. The desegregation plans shall be implemented and interpreted in a manner consistent with the applicable provisions of HUD's East Texas Comprehensive Desegregation Plan ("Comprehensive Plan") and with the provisions of this order. HUD shall discharge all duties imposed upon HUD by the terms of the Comprehensive Plan and by the provisions of this order. In the event of any inconsistency or conflict between the provisions of this order and the provisions of either the Comprehensive Plan

¹ The submission of the proposed final remedy order by the federal defendants does not waive any argument or defense or appeal right of the federal defendants concerning the appropriateness of, or the Court's authority to order, any of the remedial measures described herein, or in any other final order of the Court.

or the desegregation plans, the provisions of this order shall be controlling.

3. All provisions of this order shall require, or be construed as requiring, compliance with federal statutes as they now exist, or as they may be amended or enacted.

II. Unitary Status

1. A PHA will be deemed to have achieved unitary status as used herein when a) all of the physical improvements to low-rent public housing projects and project neighborhoods specified in the PHA's desegregation plan have been completed and b) either (i) there are no racially identifiable low-rent public housing projects within the PHA's jurisdiction, or (ii) notwithstanding the continued existence of one, or more, racially identifiable housing projects within the PHA's jurisdiction, the PHA has implemented any Waiting List Initiative specified in the PHA's desegregation plan, or any other Waiting List Initiative that could reasonably and practicably be implemented by the PHA. The term "Waiting List Initiative" as used herein means any one of the Waiting List Initiatives described in the Comprehensive Plan.

2. A project shall be regarded as non-racially identifiable if it is occupied by no more than 75% class members or no more than 75% non-class members.

III. Physical Improvements To Projects And Neighborhoods

1. Financial assistance for physical improvements specified in the desegregation plans shall be provided by HUD or, in the case of neighborhood improvements receiving financial

assistance under the Community Development Block Grant Small Cities Program, by the State of Texas, within seven years of the date of this order. The review and approval process for applications for financial assistance shall be conducted in accordance with all applicable laws and regulations, including the rules governing competitive programs, where appropriate.

2. Each such physical improvement shall be completed within three years of the date upon which the application is approved and funded. With respect to neighborhood improvements being carried out by a municipal government with financial assistance under the Community Development Block Grant Program, it shall be the responsibility of HUD to take all appropriate actions within HUD's control to obtain completion of those neighborhood improvements within the time periods specified herein.

3. If any municipal government fails to take an action necessary to complete the neighborhood improvements specified in the PHA's desegregation plan, HUD shall take appropriate action in accordance with the regulations governing the CDBG program. These actions may include (i) enforcement mechanisms available to HUD under its obligation affirmatively to further fair housing and (ii) causing the PHA to institute against the municipal government enforcement based on the municipality's violation of the cooperation agreement between the PHA and the municipality.

4. If any PHA fails to take an action necessary to complete the physical improvements specified in the PHA's

desegregation plan, HUD shall take appropriate enforcement action against the PHA. These actions may include one or more of the actions described in the Comprehensive Plan at p. 20 for dealing with the failure of a PHA to follow its desegregation plan.

IV. Creation Of Desegregated Housing Opportunities

1. Within five years from the date of this order, HUD shall create a total of 5,134 desegregated housing opportunities for elderly and non-elderly class members in non-minority census blocks in the class action area. Desegregated housing opportunities shall be offered first to class members residing in predominately African-American low-rent public housing projects, second to class members who are on a waiting list for low-rent public housing as of the date of this order, and third to class members who apply for low-rent public housing subsequent to the date of this order.

2. The term "non-minority census block" is defined in accordance with the "1/4 mile radius" methodology described in the report of the East Texas Demographic and Mapping Analysis conducted by George Galster of the Urban Institute under a contract with HUD (Defendants' Exhibit 116). A given census block shall be regarded as a non-minority census block if the population of the area consisting of the given census block plus all census blocks within the same PHA jurisdiction whose centroids lie within a 1/4 mile radius of the centroid of the given census block is 80%, or more, white. Notwithstanding the preceding sentence, a census block will not be regarded as a non-

minority census block if more than 50% of the African-Americans living in the area described by the 1/4 mile radius methodology are concentrated in individual census blocks with more than 80% African-American population. Within 30 days of the date of this order, HUD shall prepare, and file, a listing of the census blocks within the class action area which meet the definition of non-minority census block.

3. Provision Of Section 8 Existing Housing Certificates and Vouchers And Mobility Services. HUD shall be given credit for the creation of a desegregated housing opportunity if:

- a. A class member has been provided by HUD with a desegregative housing voucher or housing certificate. A desegregative housing voucher or housing certificate is a Section 8 existing housing certificate or housing voucher, limited for the first 120 days to use in non-minority census blocks.
- b. The class member is offered mobility counseling to assist the class member to locate an appropriate housing unit.
- c. The class member has been referred by the mobility counseling service to a landlord who is willing to accept the class member's certificate or voucher for the rental of a housing unit.
- d. The housing unit offered by the willing landlord is located in a non-minority census block within the housing market area which includes: (i) the low-rent public housing

in which the class member resides, or for which the class member has applied; or (ii) any PHA that, pursuant to the applicable desegregation plan, has been cross-listed with the PHA that operates the low-rent public housing in which the class member resides or for which the class member has applied. The term "housing market area" means the geographical area defined by HUD for purposes of setting Fair Market Rent levels under the Section 8 existing housing program for the area in which the relevant PHAs are located.

e. The unit offered by the willing landlord meets the applicable Section 8 Existing housing quality standards in 24 C.F.R. § 882.109, and contains an appropriate number of bedrooms for the particular applicant's family size and composition.

4. Actual Placement In Non-Minority Area. HUD shall also receive credit for the creation of a desegregated housing opportunity whenever a class member who has been provided with a desegregative housing certificate or housing voucher accepts an offer of a housing unit located in any non-minority census block in the class action area, or in any other non-minority area, but the unit was not obtained through a referral from the housing mobility service.

5. Referral To HUD-Assisted And/Or HUD-Subsidized Housing. HUD shall receive credit for the creation of a desegregated housing opportunity if a class member is referred by the mobility counseling service to a landlord willing to rent to the class

member, with or without the use of a Section 8 housing certificate or voucher, a suitable housing unit in a privately owned, HUD-assisted and/or HUD-subsidized housing development, or in a housing development assisted or subsidized by the Farmers Home Administration, provided that the offered housing unit meets the location requirements set forth in Paragraph 3.d. above, and provided that the African-American occupancy of the project in which the unit is located does not exceed 50%

6. HUD shall also receive credit for the creation of a desegregated housing opportunity whenever a class member, with or without the use of Section 8 housing certificate or voucher, accepts an offer of a housing unit in a privately owned, HUD-assisted and/or HUD-subsidized housing development, or in a housing development assisted or subsidized by the Farmers Home Administration, where (i) the housing unit is located in any non-minority census block in the class action area, or in any other non-minority area, (ii) the African-American occupancy of the project in which the unit is located does not exceed 50% and (iii) the unit was not obtained through a referral from the housing mobility service.

7. The mobility services referred to above shall be provided by the Fair Housing Services Center, a private, non-profit organization to be established and funded by HUD for a five-year period as set forth below.

8. The Fair Housing Services Center shall administer the desegregative Section 8 housing vouchers and certificates under contract with one or more PHAs.

V. Elimination Or Reduction Of Racially Identifiable Low-Rent Public Housing Projects

1. If the individual desegregation plan for a particular PHA does not require the use of any of the Waiting List Initiatives, that PHA shall continue to use a race-conscious tenant selection assignment plan in conformity with the requirements of Paragraph 2 of the Interim Injunction entered in this action on March 3, 1988.

2. Any particular Waiting List Initiative specified in an individual desegregation plan shall be fully implemented by the PHA within six months of the date of this order. Any PHA that is required to implement a Waiting List Initiative shall also continue to use a race-conscious tenant selection assignment plan in conformity with the requirements of Paragraph 2 of the Interim Injunction entered in this action on March 3, 1988. HUD shall provide any and all assistance to the PHA necessary to implement the Waiting List Initiative, such as the drafting of detailed instructions to guide the PHA in the implementation of the Waiting List Initiative, and the preparation of interagency agreements required for the Cross-Listing Initiative, the Merged Waiting List Initiative, the Area-Wide Waiting List Initiative and the Housing Opportunities Waiting List Initiative.

3.a. If any Waiting List Initiative, such as the Affirmative Action Waiting List Initiative, employs race-conscious practices

for the selection of tenants for assignment to a low-rent public housing project, an offer of alternative housing shall be made to any class member who would otherwise have been offered a unit in the project but for the need to achieve a desired racial balance in the project. Such an offer of alternative housing shall be made to a class member if (i) the class member has applied for low-rent public housing with the PHA operating the project; (ii) the class member meets all applicable eligibility and screening requirements for admission to public housing operated by the PHA; and (iii) and the class member would otherwise have been offered an available unit in the project but for the advancement of a white applicant to the head of the waiting list for that unit under the terms of the Waiting List Initiative, i.e. the class member held the highest position on the waiting list above the white applicant whose position on the waiting list was advanced under the terms of the Waiting List Initiative. No white applicant may be advanced on a waiting list unless it has been verified that the white applicant meets all eligibility requirements and tenant selection criteria applicable to the low-rent public housing project.

b. In order to satisfy the requirements for an offer of alternative housing (i) the class member must be provided with a desegregative Section 8 housing voucher or housing certificate; (ii) all other requirements for the creation of a desegregated housing opportunity specified in Paragraph IV.3. above must be satisfied and, in addition, (iii) there must be no legitimate

basis for the class member to refuse the offered unit.

Legitimate reasons to refuse an offer are limited to remoteness to jobs or day care and lack of transportation. The burden is on the applicant to demonstrate that the proffered reason is legitimate.

c. The public housing unit that otherwise would have been offered to the class member shall remain vacant pending receipt by the class member of an offer of alternative housing. If no offer of alternative housing is made to the class member within 180 days of the date on which the public housing unit in question became available for assignment, then the class member may elect either (i) to move into the public housing unit or (ii) to use the desegregative housing certificate or voucher without the geographic restriction described in Paragraph IV.3.a. above, within the time period prescribed in 24 C.F.R. § 882.209(d).

d. The white applicant whose position on the waiting list has been advanced under the terms of the Waiting List Initiative may be assigned to the public housing unit if the class member who would otherwise have been offered that unit (i) has received an offer of alternative housing or, (ii) has elected to use the desegregative housing voucher or certificate as described in the preceding subparagraph.

e. If the class member who would otherwise have been offered the public housing unit rejects an offer of alternative housing, HUD shall, within 7 days of such rejection provide plaintiffs with a written notice stating the name of the

applicant and stating the basis for HUD's determination that the applicant rejected the offer of a dwelling unit meeting the requirements for an offer of alternative housing.

f. The plaintiffs shall have 7 days from the date of notice under the preceding subparagraph to submit to HUD, in writing, any objections plaintiffs may have to HUD's determination. If timely objections are submitted by the plaintiffs, the public housing unit shall remain vacant pending a decision by the Court. Except as provided in Paragraph V.3.b. above, in any such proceeding, HUD shall bear the burden of proving that the applicant has rejected an offer of alternative housing. If no objection is made, or, upon objection, the Court determines that an offer of alternative housing was received by the class member who would otherwise have been offered the public housing unit, the white applicant may be assigned to that public housing unit.

4. If a white applicant would otherwise have been offered an available public housing unit but for the advancement of a class member to the head of the waiting list for that unit under the terms of a Waiting List Initiative, there shall be no requirement for the provision of any alternative housing to the white applicant.

VI. Fair Housing Services Center

1. HUD shall establish a Fair Housing Services Center (FHSC), the functions of which must include providing assistance to class members in locating and obtaining affordable

desegregated housing in areas where they choose and providing class members with fair housing counseling services.

2. The FHSC shall be operated by a private, non-profit organization. HUD shall provide funding to the FHSC in an amount no less than \$500,000 per year for a period of five years.

3. Within 60 days of the date of the entry of this order, HUD shall serve upon the plaintiffs, and submit for approval of the Court, a proposed Request for Proposals (RFP) inviting private non-profit organizations to apply for a contract with HUD to operate the FHSC. The plaintiffs shall have 10 days from the date of service within which to file objections to the proposed RFP. If such objections are filed, the Court shall conduct such proceedings as are required to resolve the objections.

4. Upon approval of the RFP by the Court, HUD shall publish the RFP in the Commerce Business Daily. Within 120 days of the date of publication of the RFP, HUD shall make its selection of the organization to operate the FHSC.

5. The FHSC shall provide the following services:

a. pre-screen all clients of the FHSC who have not already been screened by a PHA to document each client's ability and willingness to comply with an acceptable lease and HUD program requirements.

b. provide information and counseling with respect to housing opportunities to class members;

c. monitor the compliance of the providers of low-income housing in the class action area (low-income public housing and

assisted housing) with the fair housing laws and the requirements placed upon the providers under the Comprehensive Plan and the individual desegregation plans;

d. encourage and assist in the development of desegregative housing opportunities, including outreach to private landlords in non-minority areas and counseling and referral services to Section 8 existing housing tenants and applicants who wish to utilize their Section 8 certificates or housing vouchers in a desegregative fashion;

e. encourage and assist class members to make desegregative moves within the low income housing program and to privately owned assisted housing programs;

f. administer the desegregative housing certificates and vouchers to be provided by HUD under contract with one or more PHAs.

g. give each class member written notice, every six months, in a form and distribution method to be approved by HUD, of all HUD-assisted and/or HUD-subsidized low-income housing developments in the housing markets where the class member resides that offer the class members a desegregative housing opportunity, provide notice of the full address, telephone number, and name of the person responsible for accepting applications for the development, a short description of the type of housing offered by the development, and the general eligibility requirements for the development; and

VI. Termination Of Judicial Supervision

1. Whenever a particular PHA has satisfied the requirements for unitary status as defined in Section II of this order, HUD may apply to the Court for a declaration of unitary status for that PHA. Upon issuance by the Court of a declaration of unitary status for a particular PHA, judicial supervision pursuant to this order, or any other order entered in this case, of HUD's activities with respect to that PHA shall terminate.

2. Judicial supervision pursuant to this order, and any other order entered in this case, of HUD's activities in the class action area shall terminate when a declaration of unitary status has been issued for each of the PHAs in the class action area and when HUD has discharged all other duties imposed upon HUD by the terms of this order.

3. Ten years after the date of this order, if the Court's jurisdiction has not been sooner terminated, the Court shall determine whether its jurisdiction over HUD's actions with respect to any PHA that has not achieved unitary status should be continued or terminated. The Court shall extend its jurisdiction over HUD if it determines that (i) that any of the specific obligations to be performed under this order have not been accomplished within that time period or (ii) that one or more PHA jurisdictions has not achieved unitary status as defined in Section II above. If the Court extends its jurisdiction solely because of (i) above, its jurisdiction shall end upon fulfillment of those specific obligations. If the court extends its

jurisdiction because of (ii) above, such jurisdiction shall end at such time as the PHA, or PHAs, have achieved unitary status as defined in Section II above.

VII. Availability Of Funding

1. Nothing in this order, or in any prior order of this Court, shall be construed to require (i) HUD to approve any particular application which does not meet HUD's requirements for funding or is competitively awarded; or (ii) HUD to approve, or authorize the approval of, applications for funds under any grant program, or otherwise expend federal funds, in an amount in excess of the amount required to discharge the specific obligations imposed by this order.

2. HUD's agreement to voluntarily carry out the terms of the desegregation plans proposed by HUD and approved by this Order, shall not be construed as a waiver of any defense HUD may have to any future demand by the plaintiff for any relief different from, or in addition to, the specific obligations imposed by this order.

3. HUD's duty to discharge the obligations imposed upon HUD by the terms of this order is subject to the availability of funding from Congress for any purpose for which funding is required and to the existence of statutory authority generally authorizing acts necessary for performance by HUD.

4. HUD shall not be found to be in violation of this order on account of any failure to perform any obligation imposed upon HUD by the terms of this order resulting from the unavailability

of funding from Congress necessary for performance, or from modification or revocation of statutory authority necessary for performance, or from the failure of HUD or any other person to seek such authority from Congress.

5. If at any time before HUD discharges all of the obligations imposed upon HUD by the terms of this order, Congress fails to appropriate funds necessary for performance of those obligations, or revokes or substantially modifies any statutory authority so as to prevent HUD from performing those obligations, HUD shall so notify the plaintiffs. At that time, the parties may move for such comparable relief as appropriate, consistent with HUD's revised funding or statutory authority. Such comparable relief shall not result in an increase in HUD's financial obligations as specified in this order.

VII. Enforcement

1. The plaintiffs may move this Court for an Order to enforce the specific obligations imposed upon HUD by this Order forty-five (45) days after the plaintiffs give to HUD a written notice stating the default or non-compliance complained of, and describing the actions which plaintiffs allege must be taken to resolve the alleged default or non-compliance. Only where extraordinary circumstances require immediate action shall the notice period be waived. In that event, the provisions of Federal Rule of Civil Procedure 65 will govern.

2. Either the plaintiffs or the federal defendants may, pursuant to appropriate procedures, move this Court to enter an

Order adding another entity or person as a party to this action for the purpose of enjoining that entity or party from interfering with or frustrating the implementation of this order.

3. Henry Cisneros, Secretary of HUD, and Roberta Achtenberg, Assistant Secretary of HUD for Fair Housing and Equal Opportunity, and their successors in office, are named, pursuant to 5 U.S.C. § 702, as the officers personally responsible for compliance with this order.

DATED: _____

UNITED STATES DISTRICT JUDGE