

EOB 3/31/95

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

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAR 30 1995
DAVID J. MALAND, CLERK
BY DEPUTY *Elizabeth H. Smith*

LUCILLE YOUNG, et al., §
Plaintiffs, §
v. §
HENRY G. CISNEROS, et al., §
Defendants. §

P-80-8-CA
FINAL JUDGMENT

FINAL JUDGMENT AND DECREE

In 1985, defendants in the above-entitled and numbered civil action were found liable for knowingly and continually maintaining a system of segregated housing in a thirty-six county area of East Texas in violation of the constitutional and civil rights of a class of African-Americans. Young v. Pierce, 628 F. Supp. 1037 (E.D. Tex. 1985). An interim injunction issued in this action in 1988. Young v. Pierce, 685 F. Supp. 986 (E.D. Tex. 1985). Such interim injunction was amended by order of this court in 1990. Order for Further Relief, September 10, 1990. After extensive briefing by the parties and a hearing on the plaintiffs' motion for final remedy, it is

ORDERED, ADJUDGED, and DECREED that the Honorable Henry G. Cisneros, as Secretary of the Department of Housing and Urban Development ("HUD"), his officers, agents, servants, employees, successors, and all persons in active concert or participation with them shall be, and are hereby, **PERMANENTLY ENJOINED**, either

296

directly, or through contractual or other arrangements, to take the actions necessary to effectuate the relief decreed by the provisions of this Final Judgment and Decree, as follows:

1. The individual desegregation plans and the individual desegregation plan amendments for each Public Housing Authority ("PHA") submitted by the Department of Housing and Urban Development ("HUD") are hereby approved, subject to the modifications contained in this judgment and decree. 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. Within ninety days from the issuance of this judgment and decree HUD shall re-file the individual desegregation plans, which shall fully incorporate the amendments to such plans, in order that a fully integrated plan for each PHA will be on file.

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 judgment and decree. HUD shall discharge all duties imposed upon HUD by the terms of the Comprehensive Plan and by the provisions of this judgment and decree. In the event of any inconsistency or conflict between the provisions of this judgment and decree and the provisions of either the Comprehensive Plan or the desegregation plans, the provisions of this judgment and decree shall be controlling.

3. All orders, including the interim injunction previously issued in this action, shall be in full force until HUD attains unitary status, as defined in this judgment and decree, and judicial supervision ends in accordance with this judgment and decree. All previous orders entered in this action shall be interpreted in a manner consistent with this judgment and decree. In the event of any inconsistency or conflict between the provisions of this judgment and decree and the provisions of any earlier order, the provisions of this judgment and decree shall be controlling.

4. All provisions of this judgment and decree shall require, or be construed as requiring, compliance with federal statutes as they now exist, or as they may be amended or enacted.

I. 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 ("CDBG Small Cities Program"), by the State of Texas, within seven years of the date of this judgment and decree. 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 as soon

as is feasible and practicable after approval and funding and, in no event, shall the time period for the completion of any such physical improvement exceed a period of three years from 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 ("CDBG 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.

5. Where HUD has required improvement of neighborhood

conditions as part of the desegregation remedy for a PHA, HUD shall cause that PHA and the responsible municipality to enter into a memorandum of understanding under which the municipality agrees to carry out the required neighborhood improvements. Each such memorandum of understanding shall identify the neighborhood conditions to be corrected or upgraded and describe the work to be done in carrying out such correction or upgrading. If such work requires funding under the CDBG Program, the memorandum of understanding shall also contain a preliminary cost estimate for the required work. All such memoranda of understanding shall be entered into by the PHAs and their respective municipalities no later than July 1, 1995. All such memoranda of understanding shall be submitted for the approval of the court. Upon approval by the court, the memorandum of understanding between a PHA and a municipality shall define the full extent of the obligation to correct or upgrade neighborhood conditions in that PHA and in that municipality.

6. In approving applications for the funding of physical improvements, or the provision of amenities, to low-rent public housing projects in the class action area, HUD shall, to the extent consistent with applicable statutory and regulatory requirements, give priority to the funding of applications for making such improvements, or providing such improvements, to racially identifiable African-American projects, i.e., low-rent public housing projects in which seventy-five percent (75%) or more of the residents are African-Americans.

7. The amended individual desegregation plans require, and the comprehensive plan contemplates, certain physical improvements which include, inter alia, the provision of air conditioning equipment, laundry facilities, community centers, and playgrounds. Plaintiffs additionally seek the provision of carpeting, dishwashers, a utility allowance to account for the reasonable use of air conditioning, and garbage disposals in predominately and historically African-American projects. Moreover, plaintiffs identify other conditions present at predominately and historically African-American projects that are not present at the historically and predominantly white projects, including inadequate security and maintenance.

HUD shall satisfy the obligations of the individual desegregation plans as they pertain to amenities and services. In addition to those amenities and services required by the individual desegregation plans, HUD shall provide the amenities and services available in any of the historically and predominantly white projects at the historically and predominately African-American projects of like or similar kind within the PHA. The amenities and services required at the non-elderly family units at historically and predominately African-American projects in a given PHA are to be determined by evaluating the historically and predominately white non-elderly family units within the same PHA. For example, HUD must ensure that the historically and predominantly African-American non-elderly family units include carpeting if a historically and predominately white non-elderly family unit

includes carpeting. Moreover, both projects shall be staffed with maintenance personnel in equal numbers or such numbers as necessary to maintain the premises in substantially similar condition.

II. Creation Of Desegregated Housing Opportunities

1. Within seven years from the date of this judgment and decree, 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 judgment and decree, and, third, to class members who apply for low-rent public housing subsequent to the date of this judgment and decree.

2. a. 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 area consisting of the given census block, plus all census blocks within the PHA jurisdiction whose centroids lie within a 1/4 mile radius of the centroid of the given census block (i) has a percentage of white population of more than eighty percent (80%), or (ii) has a percentage of white population greater than 100%, minus the PHA jurisdiction's overall

percentage of African-American population.

b. Notwithstanding subsection II.2.a., a census block will not be regarded as a non-minority census block, if (i) more than fifty percent (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 eighty percent (80%) African-American population, or (ii) the population of the area described by the 1/4 mile radius methodology is more than forty percent (40%) African-American or (iii) geographic, demographic, or social factors, including proximity to racially impacted areas or isolation from population centers or community services, indicate that the census block should be regarded to be in a racially impacted areas.

3. To the maximum extent feasible and practicable, HUD shall, through the use of tenant-based housing assistance, create within each PHA jurisdiction, the number and type (elderly and non-elderly) of desegregated housing opportunities which HUD has determined to be needed within each particular PHA jurisdiction, as indicated in Defendants' Hearing Exhibit No. 119, Table 1.

4. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of tenant-based housing assistance, that PHA's unmet need shall be satisfied by offering class members residing within that particular PHA a desegregative housing opportunity located in an adjacent jurisdiction. Such adjacent jurisdiction can be no more than thirty-five miles from the PHA and must be accessible from the PHA

by adequate and feasible highway links and public transportation.

5. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of tenant-based housing assistance, either within the PHA jurisdiction or an adjacent jurisdiction, then HUD shall, to the maximum extent feasible and practicable, and consistent with all statutory and regulatory requirements, satisfy that PHAs unmet need for desegregated housing opportunities through the use of project-based Section 8 existing housing certificates and vouchers.

6. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of either tenant-based or project-based Section 8 housing assistance, then that PHA's unmet need shall be satisfied through the creation of desegregative housing opportunities anywhere within the class action area.

7. 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.

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.

f. The unit offered by the willing landlord is located outside an area where a reasonable African-American would perceive significant racial hostility.

g. 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 adequate and feasible transportation. The burden is on the applicant to demonstrate that the proffered reason is legitimate. The special master, or some designated representative of the special master, shall make the initial determination as to whether the applicant has carried his or her burden in this regard.

8. 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.

9. 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 II.7.d., above, and provided that the African-American occupancy of the project in which the unit is located does not exceed fifty percent (50%).

10. 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 fifty percent (50%) and (iii) the unit was not obtained through a referral from the housing mobility service.

11. 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.

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

III. 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 specific 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 judgment and decree. 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. 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 within sixty days of the date on which the public housing unit in question became available for assignment.

a. 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 non-class member 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 non-class member applicant whose position on the waiting list was advanced under the terms of the Waiting List Initiative. A non-class member applicant may not be advanced on a waiting list, unless it has been verified that the non-class member 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 and (ii) all other requirements for the creation of a desegregated housing opportunity specified in Paragraph II.7., above, must be satisfied.

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.

d. If the class member who would otherwise have been offered the public housing unit rejects an offer of alternative housing, HUD shall, within seven 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.

e. The plaintiffs shall have seven 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 special master. Except as provided in Paragraph III.3.b. (referring to Paragraph II.7.g.), 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 special master determines that an offer of alternative housing was received by the class member who would otherwise have been offered the public housing unit, the class member shall be placed on the waiting list in the position occupied by the non-class member advanced in accordance with the Waiting List Initiative, and the non-class member applicant advanced under the Waiting List Initiative shall be assigned to the public housing unit. Either party dissatisfied with the decision of the special master may seek review of that decision by this court within seven days of the special master's decision.

f. If a class member rejects an offer of alternative housing after previously receiving an offer of alternative housing and rejecting such offer, the special master shall determine whether the applicant will again be placed on the waiting list in the position occupied by the advanced non-class member applicant or will receive different consideration in light of the unusual circumstances. Either party dissatisfied with the decision of the special master may seek review of that decision by this court, within seven days of the special master's decision.

g. If no offer of alternative housing is made within sixty days, HUD shall notify the special master, within seven days, of the circumstances preventing an offer of alternative housing. The special master shall investigate the conditions allegedly causing HUD's failure to make an offer of alternative housing. If the special master determines that HUD is acting in good faith, the class member shall be provided a desegregative housing certificate

or voucher which may be used without the geographic restriction described in Paragraph II.7.a., above, within the time period described in 24 C.F.R. § 882.209(d). A finding that HUD acted in bad faith shall be evidence to be considered in relation to any motion to hold HUD in contempt.

4. HUD shall provide a section 8 existing housing voucher to the non-class member applicant who 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, i.e., the non-class member applicant who held the highest position on the waiting list above the class member applicant whose position on the waiting list was advanced under the terms of the Waiting List Initiative.

5. In determining whether to require a PHA to use the Affirmative Action Waiting List Initiative, or any other race conscious tenant selection and assignment plan, for a particular low-rent public housing project, HUD shall not consider the impact of the integration of the project on the racial composition of the neighborhood surrounding that project.

IV. 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, additionally, 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 sixty days of the date of the entry of this judgment and decree, 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 ten 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, as well as 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 manner furthering desegregation;

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.

6. The plaintiffs may seek review, in this court, of HUD's final selection of the organization to operate the FHSC. Such review shall be in accordance with the standards and procedures for

judicial review set forth in the Administrative Procedure Act, 5 U.S.C. §§ 701, et seq.

V. Racially Hostile Sites

1. HUD shall utilize its statutory and regulatory authority to proceed against any resident who acts to deprive any other resident of his or her civil rights under the United States Constitution or applicable civil rights statutes.

2. HUD shall assist municipal leaders, including, but not limited to, the city's mayor and its city counsel, in undertaking actions to address hostility including, but not limited to, supplying trained security officers to protect the physical safety of African-American residents when necessary.

3. Within sixty days of issuance of this judgment and decree, HUD shall determine in which localities class participation is limited because of racial hostility such that it is unlikely class members will actually use the existing public housing.

4. HUD shall develop a supplemental desegregation plan for each site deemed by HUD to be racially hostile. The supplemental plan shall examine all avenues available to HUD effectively to counterbalance racial hostility, thereby facilitating class participation and the implementation of the individual desegregation plans and this judgment and decree. Such supplemental plan shall be submitted to the special master for his approval within six months of the designation of a site as racially hostile.

VI. Unitary Status

1. When HUD and each PHA have satisfied the requirements as provided for in this judgment and decree and no racially identifiable low-rent public housing projects exists within the class action counties, HUD may apply to the court for a declaration of unitary status because of the elimination of all vestiges of discrimination attributable to HUD. See Hills v. Gautreaux, 425 U.S. 284, 297 (1976). A project shall be regarded as non-racially identifiable if less than seventy-five percent (75%) of the occupants of the project are members of the same race.

2. Upon issuance by the court of a declaration of unitary status, judicial supervision pursuant to this judgment and decree, or any other order entered in this case, of HUD's activities shall terminate.

3. Ten years after the date of this judgment and decree, if the court's jurisdiction has not been sooner terminated, the court shall determine whether its jurisdiction over HUD's actions should be continued or terminated. The court shall extend its jurisdiction over HUD if it determines that any of the specific obligations to be performed under this judgment and decree have not been accomplished within that time period. If the court extends its jurisdiction for this reason, its jurisdiction shall end upon fulfillment of those specific obligations.

VII. Reporting and Monitoring

1. HUD shall continue to report progress toward desegregation, utilizing the existing reporting system, modified so as to include reports on each significant action taken under the requirements of this judgment and decree. Each report shall be filed with the court and served on plaintiffs' counsel within thirty days of the end of the quarter covered in the report.

VIII. Enforcement

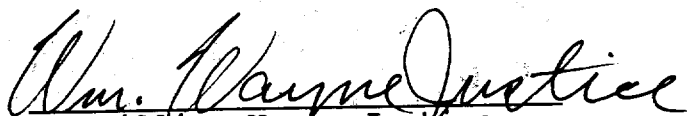
1. This Final Judgment and Decree shall be enforceable in the United States District court for the Eastern District of Texas.

2. The plaintiffs may move this court for an order to enforce the specific obligations imposed upon HUD by this judgment and decree forty-five days after the plaintiffs give HUD 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 Rule 65 of the Federal Rule of Civil Procedure will govern.

3. 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 judgment and decree.

4. The Honorable Henry G. Cisneros, Secretary of HUD, and Roberta Achtenberg, Assistant Secretary of HUD for Fair Housing and Equal Opportunity, and their successors in office or function, are named, pursuant to 5 U.S.C. § 702, as the officers personally responsible for compliance with this judgment and decree.

SIGNED the 30th day of March, 1995.


William Wayne Justice
United States District Judge