

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

VS.

CITY OF ELSA, TEXAS,

Defendant.

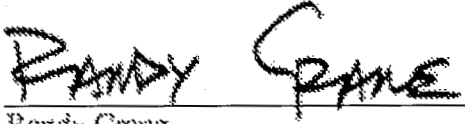
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. M-05-38

ORDER

The Joint Unopposed Motion for Entry and Approval of Consent Decree submitted by the Plaintiff United States of America and the Defendant the City of Elsa, Texas is granted. The Consent Decree resolves all issues raised in the United States' Complaint. This Court shall retain jurisdiction over the United States' action while the Consent Decree remains in effect.

SO ORDERED this 15th day of December, 2005, at McAllen, Texas.

  
Randy Crane  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

---

Civil Action No. 7:05-cv-38

United States of America,  
Plaintiff,

v.

The City of Elsa, Texas,  
Defendant.

---

CONSENT DECREE

This action was brought by the United States of America against the City of Elsa, Texas (the "City") to enforce the provisions of Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e, *et seq.* In its Complaint, the United States alleges that the City has subjected Patricia Decanini to discrimination on the basis of sex in violation of 42 U.S.C. § 2000e-2(a), and has subjected Patricia Decanini, Maricela Estimbo, and Alfrieda Reyes to retaliation in violation of 42 U.S.C. § 2000e-3(a).

The parties, desiring to settle appropriately this action, agree to jurisdiction of this Court over them and the subject matter of this action, and hereby waive the entry of findings of fact and conclusions of law. The parties, desiring to avoid protracted and unnecessary litigation, also accept this Consent Decree ("Decree") as final on the issues resolved. This Decree, being entered with the consent of the parties, will not constitute an admission, adjudication or finding

on the merits of this action, and the City denies that any unlawful sex discrimination or retaliation has occurred.

In resolution of this action, the parties hereby AGREE and the Court expressly APPROVES, ENTERS AND ORDERS the following:

**I. PARTIES AND DEFINITIONS**

1. The parties to this Decree are the United States, by the Department of Justice ("United States"), and the City of Elsa, Texas.
2. The City of Elsa, its current, former and future agents, employees, officials, designees and successors in interests are referred to hereinafter as the "City."
3. Patricia Decanini is referred to hereinafter as "Decanini."
4. Maricela Estimbo is referred to hereinafter as "Estimbo."
5. Alfrieda Reyes is referred to hereinafter as "Reyes."
6. The Equal Employment Opportunity Commission is referred to hereinafter as the "EEOC."
7. Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e, *et seq.*, is referred to hereinafter as "Title VII."
8. "Retaliation" is any act that would be prohibited under Title VII's prohibitions against retaliation such as taking an adverse employment action because the employee has opposed any practice he or she reasonably believes violates Title VII, or has made a formal or informal complaint or charge, testified, assisted, or participated in any manner in a formal or informal investigation, proceeding or hearing relating to a practice alleged to violate Title VII.

## II. SPECIFIC RELIEF

9. Without admitting the allegations of the United States, and in settlement of the United States' claims for relief for Decanini, Estimbo and Reyes, as well as in settlement of the claims of Decanini, Estimbo and Reyes if each accepts the relief provided to her by this Decree, the City agrees to do the following:

### A. Patricia Decanini

i. The City will offer Decanini reinstatement into her previous position of "Police Officer" at the Elsa Police Department, at the salary and level of seniority that she would be entitled to had she remained in that position without interruption. The City also will offer to provide remedial pension and/or Social Security benefits, as appropriate, to Decanini for the period of time between her discharge and her reinstatement. The amount the City pays for these benefits will not be deducted from the monetary award to be offered to Decanini pursuant to paragraph A(ii) below.

ii. The City will offer Decanini a total monetary award (inclusive of attorney's fees) of \$30,000.00, of which \$10,000.00 will be attributed to backpay, and \$20,000.00 will be attributed to compensatory damages. The compensatory damages will be paid in one lump sum, while the backpay amount will be paid in installments by the City to Decanini within a one-year time period.

iii. The City will not provide negative employment references for Decanini to any future prospective employer that inquires about her past employment in the Elsa Police Department, nor will it refer in any way to Decanini's filing of complaints or charges of sex discrimination or retaliation or this lawsuit when communicating with prospective employers seeking a reference for Decanini. If a reference is requested by a prospective employer, the City

City, nor will it refer in any way to Estimbo's filing of complaints or charges of sex discrimination or retaliation or this lawsuit when communicating with prospective employers seeking a reference for Estimbo. If a reference is requested by a prospective employer, the City will only confirm the length of Estimbo's employment, her past salary history, and the fact that she received satisfactory ratings.

iv. The City will notify in writing the appropriate state administrative entity of this Order and request approval to expunge from Estimbo's personnel files, as well as from any other files maintained by the City, all documents related to Estimbo's complaints or charges of sex discrimination and retaliation, including but not limited to all memoranda, performance evaluations, discipline and discharge information, that contain negative references about Estimbo's work performance.

C. Alfrieda Reyes

i. Prior to the filing of this Decree, the City has offered, and Reyes has accepted, reinstatement into her previous position of "City Secretary" for the City, at the salary and level of seniority that she would be entitled to had she remained in that position without interruption. The City also has offered to provide remedial pension and/or Social Security benefits, as appropriate, to Reyes for the period of time between her discharge and her reinstatement. The amount the City pays for these benefits will not be deducted from the monetary award to be offered to Reyes pursuant to paragraph C(ii) below.

ii. The City will offer Reyes a total monetary award (inclusive of attorney's fees) of \$59,558.00, of which \$39,558.00 will be attributed to backpay, and \$20,000.00 will be attributed to compensatory damages. The compensatory damages will be paid

in one lump sum, while the backpay amount will be paid in installments by the City to Reyes within a one-year time period.

iii. The City will not provide negative employment references for Reyes to any future prospective employer that inquires about her past employment with the City, nor will it refer in any way to Reyes's filing of complaints or charges of sex discrimination or retaliation or this lawsuit when communicating with prospective employers seeking a reference for Reyes. If a reference is requested by a prospective employer, the City will only confirm the length of Reyes's employment, her past salary history, and the fact that she received satisfactory ratings.

iv. The City will notify in writing the appropriate state administrative entity of this Order and request approval to expunge from Reyes's personnel files, as well as from any other files maintained by the City, all documents related to Reyes's complaints or charges of sex discrimination and retaliation, including but not limited to all memoranda, performance evaluations, discipline and discharge information, that contain negative references about Reyes's work performance.

10. Within fifteen (15) days after the date of entry and approval of this Decree, the City will notify Decanini, Estimbo and Reyes of its terms by mailing to each of them, in care of her attorney, via certified mail, return receipt requested, a copy of their respective letters as set forth in the attached forms — Appendix A for Decanini, Appendix B for Estimbo and Appendix C for Reyes. Each letter will advise the recipient that in order to accept the relief offered to her, she must return the executed Individual Relief and Release of Claims form, at Appendix D, to the City within thirty (30) days of her receipt of the letter unless good cause, as determined exclusively by the United States, exists for her failure to do so. A copy of the Individual Relief

and Release of Claims form and of this Decree will be enclosed with each letter. If Decanini, Estimbo or Reyes declines the relief offered by the City, the City nevertheless will have satisfied its obligation to the United States pursuant to this Decree, and the United States will not seek additional relief on her behalf.

11. The City will pay the full amount of the compensatory damages to Decanini, Estimbo and Reyes, as specified for each individual in paragraph 9, in care of her attorney, within fifteen (15) days of its receipt of the executed Individual Relief and Release of Claims form from that individual. The City will provide the appropriate tax forms to reflect the monetary amounts paid to each individual. The City will notify the United States as soon as the compensatory damages payment has been made to Decanini, Estimbo and Reyes. The City will promptly forward to the United States a copy of the canceled check or other appropriate documentation indicating that payment of the full amount of compensatory damages made to Decanini, Estimbo and Reyes has been received.

12. The City will pay the full amount of backpay to Decanini, Estimbo and Reyes, as specified for each individual in paragraph 9, in installments within a one-year time period, with the first installment occurring within fifteen (15) days of the City's receipt of the executed Individual Relief and Release of Claims form from that individual. The City will provide to the United States a payment schedule indicating the specific time frame and specific backpay amounts to be paid to Decanini, Estimbo and Reyes. The City will notify the United States as soon as the first backpay payment has been made to Decanini, Estimbo and Reyes. The City will promptly forward to the United States a copy of the canceled check or other appropriate documentation indicating that the first backpay payment made to Decanini, Estimbo and Reyes has been received.

E. A process that provides a prompt, thorough, and impartial investigation of complaints of sex discrimination or retaliation; and

F. An assurance that the employer will take immediate and appropriate corrective action when it determines that sex discrimination or retaliation has occurred.

16. Within sixty (60) days after the date of entry and approval of this Decree, the City will submit the policies and procedures described in paragraph 15 to the United States for review, comment and approval. The United States' approval will not be unreasonably withheld.

17. Within ten (10) days of the date in which the City implements the policies and procedures set forth in paragraph 15, the City will distribute copies of such policies and procedures to all City employees, and post such policies and procedures in all buildings and facilities used for posting general information to City employees.

18. The City will ensure that each new City employee receives a copy of the policies and procedures implemented pursuant to paragraph 15 at the time of the new employee's hire. Each new employee will sign an acknowledgment that he or she has read and understood such policies and procedures, and the signed acknowledgment will be placed in each new employee's personnel file.

#### V. TRAINING

19. No later than one hundred and twenty (120) days after the date of entry and approval of this Decree, the City Manager, the Police Chief, the Municipal Judge(s) and all supervisory employees will be provided with training by the City on the law of equal employment opportunity, including discrimination based on sex and retaliation, lasting at least three (3) hours. The training will include an explanation of the City's policies and procedures, as



set forth in paragraph 15, regarding initiation and investigation of a complaint of discrimination or retaliation. The City will select, with the concurrence of the United States, a qualified individual or group of individuals to conduct the training outlined in this paragraph. The United States' concurrence will not be unreasonably withheld. The United States will review and approve any proposed training program prior to its administration.

20. All persons who undergo training will sign an acknowledgment of attendance for the training described in paragraph 19. Within ten (10) days of such training, the City will provide the United States with written confirmation that the persons covered by paragraph 19 above attended this training. The City will keep on file all signed acknowledgments for the duration of this Decree.

## **VI. COMPLIANCE MONITORING**

21. The City will retain during the term of this Decree all documents, in paper or electronic form (including electronic mail), that come into its possession that are: (a) related to complaints of sex discrimination or retaliation (formal or informal) made by employees against the City; and (b) related to the training provided for under this Decree.

22. The United States may review compliance with this Decree at any time. As part of that review, the City will provide copies of any documents relevant to the City's compliance with this Decree upon the request of the United States, including but not limited to the documents described in paragraph 21.

**VII. NOTIFICATION OF THE PARTIES**

23. All documents required to be delivered under this Decree to the United States will be sent to the following address if sent by U.S. mail:

Chief  
Employment Litigation Section  
Civil Rights Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Documents sent by overnight delivery service should be sent to the following address:

Chief  
Employment Litigation Section  
Civil Rights Division  
United States Department of Justice  
601 D Street, NW  
Washington, DC 20004

24. All documents required to be delivered under this Decree to the City will be sent to the attention of:

Mayor and/or City Manager  
City of Elsa, Texas  
P.O. Box 427  
216 E. VFW Street  
Elsa, TX 78543-0427

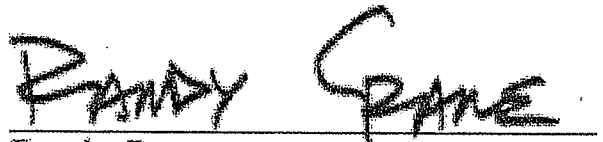
**VIII. JURISDICTION OF THE COURT**

25. The Court will maintain jurisdiction of the matters covered by this Decree for a period of one (1) year from the date of entry and approval of this Decree. This Decree will expire without further order of this Court one year from the date of entry and approval.

26. If a dispute arises concerning compliance with this Decree, the parties will engage in good faith efforts to resolve the issue before seeking action by the Court. If the parties are

unable expeditiously to resolve the issue, any party may move the Court for resolution, provided that written notice is first provided to the other party.

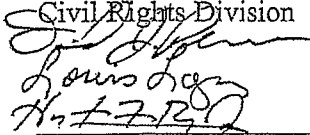
So ORDERED this 15th day of December, 2005, at McAllen, Texas.

  
\_\_\_\_\_  
Randy Crane  
United States District Judge

AGREED AND CONSENTED TO:

On behalf of Plaintiff  
United States of America

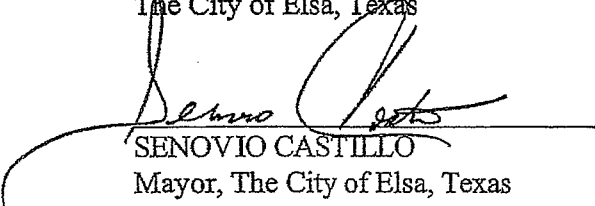
BRADLEY J. SCHLOZMAN  
Acting Assistant Attorney General  
Civil Rights Division



Dated: 10/12/2005

DAVID J. PALMER  
WILLIAM B. FENTON  
LOUIS LOPEZ  
HECTOR F. RUIZ, JR.  
United States Department of Justice  
Civil Rights Division  
Employment Litigation Section  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

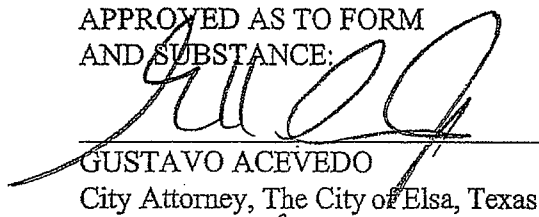
On behalf of Defendant  
The City of Elsa, Texas



SENOVIO CASTILLO  
Mayor, The City of Elsa, Texas


Dated: 10/6/05

APPROVED AS TO FORM  
AND SUBSTANCE:



GUSTAVO ACEVEDO  
City Attorney, The City of Elsa, Texas

Dated: 10/6/05



RICARDO J. NAVARRO  
FRANCISCO MARTINEZ  
Denton, Navarro, Rocha & Bernal, PC  
701 E. Harrison Street, Suite 100  
Harlingen, TX 78550  
Retained Defense Counsel for  
The City of Elsa, Texas

Dated: 10/6/05