

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>ASOCIACIÓN DE TRABAJADORES FRONTERIZOS</b>	)	
2101 Myrtle Avenue	)	
P.O. Box 10454	)	
El Paso, Texas 79901	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No.</b> _____
	)	
v.	)	
	)	
<b>UNITED STATES DEPARTMENT OF LABOR</b>	)	
200 Constitution Avenue, NW	)	
Washington, DC 20210	)	
	)	
<b>Defendant.</b>	)	

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**PLAINTIFF'S ORIGINAL COMPLAINT**

**I. INTRODUCTION**

1. *Asociación de Trabajadores Fronterizos* (ATF), or Association of Border Workers, a membership organization comprised of thousands of workers whose jobs in the United States have been lost or threatened due to the North American Free Trade Agreement (NAFTA), brings this action against the United States Department of Labor (DOL) for violating the Trade Act of 1974 (Trade Act), specifically 19 U.S.C. § 2296, in the administration of job training benefits for workers who are limited English proficient (LEP). *See* [www.lep.gov](http://www.lep.gov).
  
2. DOL's violations of law have resulted in the waste of over one hundred million federal taxpayer dollars on remedial education for Hispanic workers that fails to provide the skills that these workers need to remain productive members of the labor force after the jobs that they held for years move abroad. DOL's violations of law limit access to bilingual training methods for LEP workers that combine the necessary remedial education with the vocational skills training that workers need to qualify for replacement jobs. Because DOL denies necessary skills

training, Hispanic workers who lose good jobs due to overseas competition often end up in minimum wage jobs that they could have gotten even before federal taxpayers invested thousands of dollars in so-called “training.” By this lawsuit, ATF seeks the injunctive relief that is necessary to secure the job training that Congress promised as a remedy to trade-dislocated workers, even if those workers happen to speak only Spanish.

3. ATF alleges three specific violations of 19 U.S.C. § 2296. First, while Congress conditions approval of Trade Act training upon a finding that the training will render each worker completely job ready, DOL allows its state agencies to approve incomplete training. Second, while Congress requires DOL to issue all regulations necessary to accomplish Congress’s goal of 80% wage replacement for all workers who enter Trade Act training, DOL has failed to issue any such regulations, and instead allows its state agencies to affirmatively disregard 80% wage replacement in making training approval decisions. Third, while Congress requires DOL to assure that Trade Act training is provided on the job insofar as possible, DOL regulations reduce on-the-job training to an option that state agencies may ignore.

## **II. JURISDICTION**

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. §§ 2201-02 (declaratory judgment).

## **III. PARTIES**

5. Plaintiff *Asociación de Trabajadores Fronterizos* (ATF) is an advocacy and self-help workers’ organization comprised principally of garment and other workers whose jobs are lost or threatened due to foreign competition. ATF is a project of the Center for Popular Education and Community Organizing, a non-profit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

6. ATF's purpose is to help Spanish-speaking workers on the U.S.-Mexico border seek improved working conditions, including employer adherence to labor laws, better jobs and pay through job training, broader access to health care, and promotion of permanent jobs at living wages. ATF offers counseling, assistance, advocacy, and referral services to workers who are displaced due to foreign competition.
7. Nearly all ATF members are of Mexican national origin, communicate in Spanish, and are limited in their ability to communicate in English.
8. Since 1996, ATF's membership has consistently included numerous LEP workers who qualify for and have undertaken training under the Trade Act. Since 1996, ATF has advocated before DOL for the language-relevant vocational skills training needed by LEP dislocated workers. Since 1996, DOL has consistently recognized ATF as a principal advocate for trade-affected workers who seek language-relevant vocational skills training.
9. The United States Department of Labor (DOL) is the federal agency responsible for administering job training benefits for trade-dislocated workers under the Trade Act. 19 U.S.C. §§ 2296(a)(9), 2311(a), and 2320.

#### **IV. FACTS**

##### **A. Statutory Framework**

10. The Trade Act of 1974, 19 U.S.C. § 2291, *et seq.*, as amended, creates a program of Trade Adjustment Assistance (TAA) as a remedy for workers who lose their jobs as a result of foreign competition. TAA enables qualified workers to access job training services and cash allowances necessary to enable them to participate in training.
11. TAA has but one stated purpose, which is to enable trade affected workers to "return to suitable employment." 20 C.F.R. § 617.2. Congress defines "suitable employment" as

employment paying “not less than 80% of the worker’s average weekly wage” prior to a trade-induced layoff. 19 U.S.C. § 2296(e).

12. As a remedial statute, the Trade Act must be liberally construed to achieve its stated purpose. 20 C.F.R. § 617.52(a); *UAW v. Marshall*, 584 F.2d 390, 395 & nn. 16-17 (D.C. Cir. 1978); *UAW v. Brock*, 816 F.2d 761, 767 (D.C. Cir. 1987).

13. DOL administers TAA and is required to prescribe and enforce all regulations that are necessary to do so. 19 U.S.C. §§ 2296(a)(9) and 2320.

14. DOL may enter into agreements with cooperating state agencies under which state agencies act as DOL agents in administering TAA. 29 U.S.C. § 2311(a).

15. All funds for TAA benefits and administration are provided by the federal government. 19 U.S.C. § 2317.

16. Congress specified the following requirements for all Trade Act training:

“If the Secretary determines that—

(A) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker,

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment following completion of such training,

(D) training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers)[,]

(E) the worker is qualified to undertake and complete such training, and

(F) such training is suitable for the worker and available at a reasonable cost, the Secretary shall approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such (subject to the limitations imposed by this section) training paid on his behalf by the Secretary directly or through a voucher system. Insofar as possible, the Secretary shall provide or assure the provision of such training on the job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.”

19 U.S.C. § 2296(a)(1) (2004).

## **B. Statutory Violations**

17. DOL violates 19 U.S.C. § 2296(a)(1)(C) by allowing state agencies to approve Trade Act training even when the state agencies know that the training program under consideration for approval does not provide all of the skills that a worker needs to be fully job ready. Indeed, DOL has stated that:

“The statute and regulations require that there must be a reasonable expectation of employment upon completion of training and that the worker will be job ready at the completion of training. There may be cases in which the assessment of a worker’s skills indicates that the available 104 weeks of training, or 130 weeks if remedial education is needed, may be insufficient to provide all of the training needed by an individual to be job ready at the completion of training, and the individual may need additional training funded by another source. In such cases, the training program that may be approved should provide as many of the job skills as possible.”

18. DOL violates 19 U.S.C. §§ 2296(a)(9) and 2320 by failing to issue any regulations or other policy guidance that states what actions state agencies are required to take in the training approval process to accomplish the single stated objective of Trade Act training, which is to allow workers to return to employment paying 80% or more of prior wages. DOL has failed to make state agencies aware of any action whatsoever that they are required to take in the training approval process to accomplish Congress’s single, clear goal for Trade Act training.

19. DOL violates 19 U.S.C. § 2296(a)(1) by allowing state agencies to approve classroom training over on-the-job training when both types of training are available for a worker and both meet all requirements of 19 U.S.C. § 2296. On its face, 20 C.F.R. § 617.23(c)(1) turns Congress’s required choice of on-the-job training into an option that state agencies may ignore.

## **C. Injury**

20. DOL has entered into an agreement with Texas under which the Texas Workforce Commission (TWC) administers the Trade Act as agents of DOL.

21. To decide what Trade Act training to approve for each Texas worker, TWC employees follow the policies and practices that are created, approved, and overseen by DOL.
22. According to DOL's certifications of job losses due to NAFTA, the City of El Paso, Texas, is home to roughly five times more NAFTA-dislocated workers than any other city in the United States.
23. In deciding what Trade Act training to approve for LEP workers in El Paso, TWC and its officials, employees, and agents have at all relevant times acted or failed to act as follows:
  - a. they approve training that they know to be incomplete at the time of approval, in that they know the worker will need further training to be job ready;
  - b. they fail to use 80% wage replacement as a standard for deciding what training may be approved for each worker; and
  - c. they ignore on-the-job training altogether in considering what training to approve, and they fail to require that on-the-job training be approved for a worker each time such an opportunity meets the requirements of 19 U.S.C. § 2296.
24. DOL, through its officials, employees, and agents, has approved of the actions and failures to act listed in Paragraph 23.
25. For LEP workers including ATF members, the actions and failures to act alleged in Paragraphs 17 through 24 proximately cause unlawful reliance on remedial education as complete or partial substitutes for bilingual vocational job training that is necessary to comply with 19 U.S.C. § 2296.

26. Improper substitution of remedial education courses for vocational training injures LEP workers including ATF members in the following ways:

- a. deprivation of a federal right;
- b. diminished earning capacity;
- c. lost wages; and
- d. diminished access to benefits, including health insurance.

27. Plaintiff ATF's membership includes numerous people who, from 1996 through the time that ATF filed this lawsuit, have been injured as described in Paragraph 26.

28. Plaintiff ATF's membership includes numerous workers who are both LEP and currently employed in the garment and other industries in El Paso that are vulnerable to layoffs due to foreign competition, and thus subject to the injuries described in Paragraph 26.

29. Plaintiff ATF has suffered injury to its organizational interests due to the Secretary of Labor's violations of the Trade Act, as stated in Paragraphs 17 through 19 above, as follows:

- a. ATF has devoted significant resources, time, and energy for seven years trying to correct the training deficiencies caused by Defendant's illegal actions and failures to act, which has prevented ATF from addressing other priorities; and
- b. ATF's inability to prevent the ongoing violations of law at issue in this litigation after seven years of effort has frustrated ATF's organizational goals and its ability to grow in financial and human resources.

## V. CAUSE OF ACTION

30. The Administrative Procedure Act, 5 U.S.C. § 706, empowers the Court to enter all injunctive and declaratory relief that proves necessary to secure DOL's compliance with the Trade Act.

31. Each action and failure to act listed in Paragraphs 17 through 24 above deprived numerous members of Plaintiff ATF of their rights to training under 19 U.S.C. § 2296.

32. Each action or failure to act listed in Paragraphs 17 through 24 above resulted from one or more of the following:

- a. Defendant DOL implemented policies or practices that conflict with 19 U.S.C. § 2296;
- b. Defendant DOL failed to prescribe the regulations necessary to carry out 19 U.S.C. § 2296, as required by 19 U.S.C. §§ 2296(a)(9) and 2320;
- c. Defendant DOL failed to enforce Trade Act compliance by the Texas Workforce Commission, as required by 19 U.S.C. § 2311(a)-(b).

33. Each action or failure to act listed in Paragraphs 17 through 24 above was arbitrary and capricious, an abuse of discretion, and/or contrary to law under 5 U.S.C. § 706(2)(A), and proximately caused injury to ATF and its membership.

## VI. PRAYER

34. WHEREFORE, Plaintiffs pray that the Court grant them the following relief:
- a. enter a declaratory judgment that Defendant's policies and practices for Trade Act administration, as described in Paragraphs 17, 18, and 19 above, violate workers' rights to training under 19 U.S.C. § 2296;
  - b. enter an injunction directing Defendant to—
    - i. disallow approval of any form of Trade Act training unless the approving agency reasonably expects the worker to be fully job ready upon completion of the training program under consideration for approval;
    - ii. promulgate regulations stating what actions must be taken in the training approval process to accomplish Congress's 80% wage replacement goal for all Trade Act training;
    - iii. replace 20 C.F.R. § 617.23(c) with a new regulation that states when on-the-job training opportunities must be approved over classroom training;
    - iv. order state agency officials to take appropriate action to enforce the correct interpretation of 19 U.S.C. § 2296 in pending and future cases, and, consistent with state law, to correct and remedy any erroneous training approval determinations by, without limitation, providing all bilingual training that is necessary for limited English proficient workers who were illegally denied access to bilingual training; and
    - v. provide monthly reports to the Court and to Plaintiff on DOL's progress in complying with the Court's injunction;

- c. award Plaintiff, to the extent permitted by law, its costs and litigation expenses;  
and
- d. award Plaintiff all other relief as the Court deems just and proper.

Respectfully submitted,

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