

workers, DOL began providing LEP workers with cheap remedial education instead of the bilingual vocational training that these workers need to find replacement jobs. Plaintiffs seek injunctive relief as 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.

2. Plaintiffs allege three specific violations of 19 U.S.C. §§ 2296 and 2320. First, the statute conditions training approval upon a finding that the training will render each worker completely job-ready, but DOL allows state agencies to approve incomplete training. Second, the statute requires DOL to regulate training approval decisions as necessary to achieve Congress's goal of 80% wage replacement, but DOL has failed to issue any such regulations, and instead allows state agencies to reject 80% wage-replacement as a standard for training approval. Third, the statute requires DOL to assure that Trade Act training is provided on the job insofar as possible, but DOL regulations reduce on-the-job training to an option that state agencies may ignore.

II. JURISDICTION

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

III. PARTIES

4. 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 that is recognized as exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

5. ATF's purpose is to help Spanish-speaking workers on the U.S.-Mexico border seek improved working conditions, including 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 trade-dislocated workers.
6. Nearly all ATF members are of Mexican national origin, communicate in Spanish, and are limited in their ability to communicate in English.
7. 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-dislocated workers who seek language-relevant vocational skills training.
8. Plaintiffs Jose De La Cruz, Sandra Mora, Rodrigo Morin, Soledad Renteria, and Marisela Rodriguez, are individuals whose permanent place of residence is El Paso County, Texas.
9. Defendant 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 as 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. The statute 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. The Trade Act must be liberally construed to achieve its stated purpose because it is a remedial statute. 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. The following requirements must be met before any Trade Act training may be approved:
"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 uses the following policy to allow 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:

“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 has failed to issue any regulations that name the actions that state agencies are required to take in the training approval process to achieve Congress’s 80% wage replacement goal for Trade Act training, and instead allows state agencies to reject 80% wage-replacement as a standard for training approval.

19. DOL’s on-the-job training regulation, 20 C.F.R. § 617.23(c)(1), allows state agencies to ignore on-the-job training altogether, and 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.

C. Injury

20. DOL has entered into an agreement with the State of Texas under which officials and employees of the Texas Workforce Commission (TWC) administer the Trade Act as DOL agents.

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 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 approve training for a worker knowing that the worker will need further training in order to become job ready in a particular occupation;
 - 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. Defendant DOL approves of the actions and failures to act listed in Paragraph 23.
25. The actions and failures to act alleged in Paragraphs 17 through 24 proximately cause unlawful reliance on remedial education as a complete or partial substitute for bilingual vocational job training that is necessary to train LEP workers in compliance with 19 U.S.C. § 2296.
26. Improper substitution of remedial education courses for vocational training under the Trade Act injures LEP trade-dislocated workers, including ATF members and the individual Plaintiffs, 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 all of the individual Plaintiffs and numerous other people who 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 DOL's violations of the Trade Act as follows:
- a. ATF has devoted significant resources, time, and energy for seven years trying to correct the training deficiencies caused by DOL'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 this Court to enter all injunctive and declaratory relief that is necessary to secure DOL's compliance with the Trade Act.
31. DOL allows state agencies to approve incomplete training, as described in Paragraph 17 above. This DOL action violates 19 U.S.C. § 2296(a)(1)(C) and is subject to this Court's corrective injunction under 5 U.S.C. §§ 706(2)(A) and 706(2)(C).

32. DOL has failed to issue regulations naming what actions state agencies are required to take to achieve Congress's 80% wage replacement goal for Trade Act training, as described in Paragraph 18 above. This DOL inaction violates 19 U.S.C. §§ 2296(a)(9) and 2320, and is subject to this Court's corrective injunction under 5 U.S.C. § 706(1).

33. DOL allows state agencies to ignore on-the-job training, as described in Paragraph 19 above. This DOL action violates 19 U.S.C. § 2296(a)(1) and is subject to this Court's corrective injunction under 5 U.S.C. §§ 706(2)(A) and 706(2)(C).

34. Each DOL action or failure to act listed in Paragraphs 31 through 33 above proximately causes injury to ATF and its membership, including each individual Plaintiff, as described in Paragraphs 20 through 26 above.

VI. PRAYER

35. WHEREFORE, Plaintiffs pray that the Court grant them the following relief:

- a. enter a declaratory judgment that Defendant U.S. Department of Labor's policies and practices for Trade Act administration contravene the requirements of 19 U.S.C. § 2296(a)(1) as to training completeness, wage replacement, and on-the-job training, and that these policies and practices violate workers' rights to training as provided in 19 U.S.C. § 2296(a)(1);
- b. enter an injunction directing Defendant U.S. Department of Labor to—
 1. disallow approval of any form of Trade Act training unless the approving agency reasonably expects the worker to be fully job ready in a named occupation upon completion of the training program that is under consideration for approval;

2. promulgate regulations naming what actions state agencies are required to take in the training approval process to achieve Congress's 80% wage replacement goal for Trade Act training;
 3. replace 20 C.F.R. § 617.23(c) with a new regulation that states when on-the-job training opportunities must be approved over institutional training;
 4. require 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 taking all necessary and appropriate action, including without limitation providing all bilingual training that is necessary to comply with the Trade Act for workers who are limited in English proficiency; and
 5. provide monthly reports to the Court and to Plaintiffs on Defendant's progress in complying with the Court's injunction;
- c. award Plaintiffs, to the extent permitted by law, their costs and litigation expenses;
- and
- d. award Plaintiffs all other relief as the Court deems just and proper.

Respectfully submitted,
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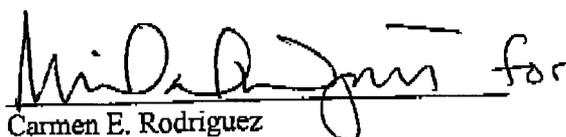
CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing document to be served upon the following counsel of record in Civil Action No. EP-02-CA-131-FM instantly by electronic mail on October 26, 2004:

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