No. 12-379

In the Supreme Court of the United States

STATE OF MICHIGAN, DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS, UNEMPLOYMENT INSURANCE AGENCY/TRA SPECIAL PROGRAMS UNIT,
Petitioner,

v.

DAWN GERSTENSCHLAGER,
Respondent.

On Petition for a Writ of Certiorari to the Huron County Circuit Court

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Trade Act of 1974 prescribes a deadline for a claimant seeking a training waiver as a prerequisite to obtaining benefits under the Act.

2. Whether a federal agency's operating instruction, which states are bound to follow by statutory agreement, is entitled to *Chevron* deference.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Rules

Other Authorities

INTRODUCTION

The Trade Act of 1974 offers money, in the form of trade readjustment allowance ("TRA") benefits, to supplement state unemployment benefits for those workers who lose their jobs when their employers move jobs out of the country. Congress required workers receiving benefits to enroll in or complete training that would enable them to find new jobs. Congress also provided for waivers of this training requirement in special circumstances. Congress's 2002 amendments to this statutory scheme created new deadlines for enrolling in training, but Congress made no changes to the timing requirements for obtaining training waivers.

Petitioner asks this Court to take the case and to rewrite the statute to allow application of the deadlines for enrolling in training to the process for obtaining waivers. There are three reasons that the petition does not meet the requirements for this Court's review. First, there is no split among opinions of state courts of last resort on this issue. Second, recent statutory amendments have decreased the importance of the issue. Third, the decision below is correct. The petition therefore should be denied.

STATEMENT OF THE CASE

1. Respondent Dawn Gerstenschlager was laid off from her job as an inspector at Harbor Beach Wire, a maker of wire harnesses for the automotive industry. Her employment began in February 1997 and ended on November 5, 2004. Cert. Rec. of Admin. Proceedings ("CR") 25. She lost her job because her employer moved operations out of the country. As she ex-

plained in justifying her application for TRA benefits under the Trade Act of 1974, "Jobs went to Mexico." *Id*.

2. It is undisputed that Ms. Gerstenschlager received incomplete and erroneous information about TRA benefits available for an employee, like her, who had lost her job when her employer moved operations out of the country.

Initially, when she was laid off, Ms. Gerstenschlager and her fellow employees "were taken into the room, told that we were going to be permanently laid off due to the outsourcing of our jobs and to go over and sign up for unemployment. And that's all we were . . . told. There was nothing about TRA benefits at all." CR 18.

The paperwork she was given when she was laid off mentioned TRA benefits and referred her to a phone number for "Michigan Works!" for additional information. When she called Michigan Works!, however, she was "told there were no benefits available." CR 28.[1]

3. Eventually, Ms. Gerstenschlager learned about the possible availability of TRA benefits. After her unemployment benefits ran out, Ms. Gerstenschlager heard from a friend who had been laid off at the same time that the friend had received TRA benefits. CR 20. Ms. Gerstenschlager immediately went to the nearest Michigan Works! office in Bad Axe, Michigan

[1] Michigan Works! is an association of local agencies selected by local workforce development boards. These "agencies are authorized to serve as the administrators for state and federal funding provided for workforce development services and activities." Pet. App. 14a n.2.

and applied for TRA benefits on June 10, 2005 (approximately seven months after she was laid off). CR 20, 25-28. That office concluded that she "possesses marketable skills for suitable employment," CR 27, and it therefore waived the requirement that she enroll in an approved retraining program to obtain TRA benefits.

4. A few days later, however, Petitioner denied Ms. Gerstenschlager's benefits application on the ground that it was purportedly untimely. CR 29.

The Trade Act of 1974 ("Trade Act"), as codified as amended in 19 U.S.C. § 2291, provides a claimant three ways to qualify for benefits if her job is sent out of the country: (1) she may enroll in a training program, (2) she may complete a training program, or (3) she may obtain a waiver of the training requirement. 19 U.S.C. § 2291(a)(5)(A) to (C). When Ms. Gerstenschlager was laid off, the Trade Act required those enrolled in a training program (the first category) to apply for benefits either within eight weeks after their employment was certified as covered by TRA programs, or within sixteen weeks after separation from covered employment. CR 13.[2] The eight and sixteen week requirements to enroll in a training program were commonly referred to as the "8/16 Rule." Although the text of the Trade Act applied the 8/16 Rule only to workers who sought to qualify for benefits by enrolling in training programs, Petitioner required claimants seeking to qualify for benefits by obtaining a training waiver (the third category) to

[2] As detailed below, Congress has extended these time limits for claims filed after May 17, 2009.

request that waiver within the same 8/16 Rule time limits.

5. Ms. Gerstenschlager timely appealed the rejection of her claim, and she appeared *pro se* at the hearing before an administrative law judge a few months later. After she told her story, the judge allowed her to ask questions. She had only one: "[H]ow do you get to a Michigan Works facility that is going to help you?" CR 21. The judge replied "I can't answer that . . . you report to Michigan Works at the nearest location that you are able to do that. . . . That's what you're required to do." CR 21-22. Ms. Gerstenschlager responded: "[T]hat's what I did. And it just seems like a lot of times you just come to a dead end." CR 22.

Ms. Gerstenschlager prevailed in the administrative process. The administrative law judge found that, because Ms. Gerstenschlager "relied on the information provided by Michigan Works (an Agent for [Petitioner])," Petitioner was estopped from denying her claim. CR 30. Petitioner's Employment Security Board of Review affirmed, finding that Ms. Gerstenschlager "acted on the faulty advice" provided by Michigan Works!. CR 34.

6. The Huron County Circuit Court concluded that estoppel could not apply against Petitioner, but it remanded to the administrative agency for a determination whether Petitioner's application of the 8/16 Rule (from the first category of the statute) to claimants who request waivers (the third category of the statute) was consistent with the Trade Act. CR 38-39.

Three years passed.

7. Meanwhile, in the interim, the Michigan Court of Appeals decided *Department of Labor & Economic Growth, Unemployment Insurance Agency v. Dykstra*, 771 N.W.2d 423 (2009). In that case, the court engaged in a careful analysis of 19 U.S.C. § 2291(a)(5), where the relevant provisions of the Trade Act governing eligibility are codified. The court explained that the purpose of the TRA benefits program under the Trade Act is "to supplement state unemployment benefits for workers who have lost their jobs as a result of competition from imports." Pet. App. 9a. Congress also wanted the TRA benefit scheme to encourage workers to gain the skills required to work in a changing marketplace and to be able to find new employment quickly. Accordingly, it provided that a worker seeking TRA benefits "must meet one of three eligibility criteria: the worker must be enrolled in an approved training program, have completed an approved training program, or have obtained a written waiver of the training requirement. See 19 USC 2291(a)(5)(A) to (C); see also 19 USC 2291(c)." *Id.* 10a.

With respect to the first eligibility category—enrollment in an approved training program—Congress amended the statute in 2002 to prescribe detailed time limits in what was then commonly referred to as the 8/16 Rule: The amended statute required a worker to enroll no later than the latest of 16 weeks after the worker's separation from the job or 8 weeks after the week in which the Secretary issued a certification covering the worker. See Pet. 2-3 (quoting 19 U.S.C. § 2291(a)(5)(A)(ii)). But Congress's contemporaneous amendments to the third eligibility category (a written waiver of the training requirement) contained no such time limitation. The

amended statute instead contained a different time requirement—that a worker must obtain the written waiver "after the date described in subparagraph B," *i.e.*, "the date on which the worker became totally separated, or partially separated, from the adversely affected employment." See Pet. 3 (quoting 19 U.S.C. § 2291(a)(5)(B) and (C)).

Examining the statute as a whole, the court concluded that "under a plain reading, it appears that Congress intended the timing deadlines stated in § 2291(a)(5)(A)(ii) to apply only to enrollments" in a training program and that "the provision of a deadline for the enrollment alternative without providing a similar deadline for the waiver alternative is consistent with the statutory scheme and the purpose behind the TRA benefits." Pet. App. 23a.

Specifically, for those workers who require retraining, "it makes sense to require the worker to demonstrate a commitment to be retrained by requiring the worker to enroll in an approved training program within a specified time." *Id.* However, for workers who are eligible for a waiver because they do not need to be retrained, either because the worker "already has marketable skills, will be retiring, or has health issues," "a strict deadline would serve only to deprive workers of the TRA benefits that Congress deemed appropriate." *Id.* at 24a. Workers who seek training waivers instead must do so within the more general deadlines for receiving benefits set forth in 19 U.S.C. § 2291(a)(1).[3] Pet. App. 25a.

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[3] Under Section 2291(a)(1), a worker must file the application for TRA benefits (1) after separation began or threatened to begin, (2) less than two years after the

The court acknowledged that the Department of Labor "has determined that the deadlines stated in § 2291(a)(5)(A) apply to the waivers permitted under § 2291(c)" in Training and Employment Guidance Letter No. 11-02, Change 1, 69 Fed. Reg. 60903 (Oct. 13, 2004). Pet. App. 12a-13a.[4] But having found that "Congress unambiguously provided that the deadlines" stated in the retraining section apply only to retraining, the court refused to defer to the Department of Labor's contrary determination. *Id.* at 26a-27a. In a footnote, the court noted that, even if the statute were ambiguous, it would not grant *Chevron* deference to the agency's position under *United States v. Mead Corp.*, 533 U.S. 218, 231-35 (2001). Pet. App. 27a n.8. It concluded "[t]he statutory provisions at issue are not ambiguous, and we will enforce them as written." *Id.* at 27a.

Petitioner did not appeal the *Dykstra* decision to the Michigan Supreme Court (or to this Court).

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worker's job was certified under the Trade Act, and (3) before the Trade Act certification expires.

[4] The court also noted that the Department was rewriting the applicable regulations "and has recognized that it is possible that Congress did not intend for the deadlines stated in 19 USC 2291(a)(5)(A)(ii) to apply to waivers." Pet. App. 21a n.3. The court quoted the Department's release in the Federal Register that it was reconsidering its "current position" because it found the alternative reading of the statute "plausible" and that it "encourage[d] public comment on this issue." *Id.* at 21a-22a n.3 (quoting 71 Fed. Reg. 50760, 50784-85 (Aug. 25, 2006)). Regulations addressing this issue have never been finalized.

8. In July 2010, Petitioner's Employment Security Board of Review applied *Dykstra* and reinstated its prior decision that Ms. Gerstenschlager was eligible for TRA benefits. CR 42-44.

9. On Petitioner's appeal, the Huron County Circuit Court likewise relied on *Dykstra* and found Ms. Gerstenschlager eligible for TRA benefits. Pet. App. 4a-7a.

10. The Michigan Court of Appeals and the Michigan Supreme Court denied Petitioner leave to appeal. Pet. App. 2a-3a.

11. Petitioner then petitioned for certiorari. Ms. Gerstenschlager, who had until the proceedings in this Court represented herself, obtained counsel, and she now files this brief in opposition

REASONS FOR DENYING THE PETITION

The petition should be denied for several reasons. First, there is no conflict among the state courts of last resort on this issue; indeed, no state court of last resort has issued an opinion squarely addressing the issue.

Second, the issue is declining in importance because, in the seven years since Ms. Gerstenschlager applied for TRA benefits, Congress has extended the deadlines in the 8/16 Rule to 26 weeks, making it less likely that claimants entitled to waivers will file after the period for enrolling in training has expired. Moreover, Congress has since amended the statute to provide tolling for those who, like Ms. Gerstenschlager, are not provided with timely information regarding their eligibility for TRA benefits.

Third, review should be denied because the Huron County Circuit Court correctly held that Congress unambiguously provided that the 8/16 Rule did not apply to a request for a waiver of the Trade Act's training requirement.

I. Review of the Questions Presented Is Not Warranted by a Split Among State Courts of Last Resort.

Petitioner cites six state-court opinions that it alleges are in conflict, but a close reading of those decisions reveals that there is no split among opinions of the state courts of last resort on the applicability of the 8/16 Rule to training waivers. In fact, no state supreme court has even issued an opinion directly on point on this issue.

The state intermediate courts of appeals in Michigan and in Minnesota both have concluded that the plain language of the Trade Act does not apply the 8/16 Rule deadlines for enrolling in an approved training program (the first statutory eligibility category) to training program waivers (the third statutory eligibility category). See *Dep't of Labor & Econ. Growth, Unemployment Ins. Agency v. Dykstra*, 771 N.W.2d 423 (Mich. Ct. App. 2009) (Pet. App. 8a); *Vanguilder v. Dep't of Emp't & Econ. Dev.*, No. A08-1023, 2009 WL 1048503 (Minn. Ct. App. Apr. 21, 2009). In neither case did the state government appeal the decision to its state supreme court. Although Petitioner did seek review in the Michigan Supreme Court in this case, the Michigan Supreme Court did not grant review and has not considered the issue.

Petitioner points to opinions of two other intermediate state courts, but those opinions also do not create issues warranting review. The Wisconsin Court of Appeals' opinion in *Wisconsin Department of Workforce Development v. Labor and Industry Review Comm'n*, 725 N.W.2d 304 (2006), which deferred to the Department of Labor's 11-02 guidance letter, is not a decision of a state court of last resort, and, because the decision was not appealed, the Wisconsin Supreme Court has not had an opportunity to consider the matter. In *Lowe v. Unemployment Compensation Board of Review*, 877 A.2d 494 (Pa. Commw. Ct. 2005), moreover, the claimant did not even argue that the 8/16 Rule deadline did not apply to training waivers. See *id.* at 496 (setting forth the claimant's arguments). Petitioner thus identifies no opinions from state intermediate courts that compel consideration by this Court.

Petitioner points to two state Supreme Court decisions, but neither provides a sound justification for review in this case. In *Williams v. Board of Review*, 948 N.E.2d 561 (Ill. 2011), the Illinois Supreme Court concluded that equitable tolling applies to the 8/16 Rule deadline set by the Act for enrolling in an approved training program. Because the Court found that equitable tolling applied, it did not bar a claim based on applying the 8/16 Rule to a statutory category other than the first category. Indeed, petitioner concedes that the Illinois Supreme Court, like the Pennsylvania intermediate court, has "not confronted the issue head on." Pet. 13.

Similarly, the Nebraska Supreme Court's decision in *Reed v. State Department of Labor*, 717 N.W.2d 899 (Neb. 2006), addressed a different factual context than the one at issue here. As Nebraska made clear in its brief in that case, "[t]here is no evidence in the record that Reed ever requested a waiver of the TRA training requirement." Br. of the State of Neb., Dep't of Labor and Fernando Lecuona, III, Comm'r of Labor, Appellees at 8, No. A-05-1473, *Reed v. State Dep't of Labor*, 717 N.W.2d 899 (Neb. 2006), 2006 WL 4528603 at *8. Ms. Reed argued that the fact that there was no deadline in the statute on training waivers meant "that the 8/16 Rule is not a deadline to apply for benefits. Rather, benefits should be applied for within a reasonable period of time." Br. of Appellant at 9, No. A-05-1473, *Reed v. State Dep't of Labor*, 717 N.W.2d 899 (Neb. 2006), 2006 WL 4528602 at *9. The Nebraska Supreme Court thus did not have occasion to consider whether the time limits of the 8/16 Rule apply to someone who, like Ms. Gerstenschlager, applied for and received a training waiver.

For good reason, this Court does not ordinarily grant certiorari to resolve disputes among intermediate state courts of appeals, *see* S. Ct. Rule 10(b), and Petitioner identifies no compelling reason for the Court to deviate from its usual practice in this case.

Even if the dearth of on-point opinions from the state courts of last resort were not dispositive, there are only a handful of state decisions cited by Petitioner for this nation-wide program. To the extent there is any disagreement in the state courts, this Court's consideration would benefit from "percolation" and the perspective of additional state courts.

Petitioner claims that "Michigan and Minnesota are caught between the proverbial rock and a hard place." Pet. 20. But the two decisions that Petitioner cites, Michigan's *Dykstra* and Minnesota's *Vanguilder*, were issued nearly four years ago, and the dire consequences Petitioner conjures have not since come to pass. Petitioner does not identify any state employees who have been held in contempt for refusing to follow the decisions of their courts. Pet. 21. Petitioner does not identify a single private employer that has expressed concern that it "will be punished for the state's decision to comply with state-court decisions." *Id.* at 22. Perhaps the best evidence that these expressed concerns are overstated is the fact that neither Michigan nor Minnesota even appealed *Dykstra* or *Vanguilder* to its respective state supreme court.

Particularly in light of the fact that there are no squarely on-point opinions from state courts of last resort, Petitioner has failed to identify a split of authority warranting this Court's review at this time.

II. The Questions Presented Are of Diminishing Importance.

Legislative amendments to the deadlines applicable to training enrollment suggest that this issue will be of diminishing importance in the future. The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1821, 123 Stat. 115, 375-77 (2009) (the "2009 Act"), made two important changes to section 2291(a)'s time limitations on enrolling in an approved training course. First, the 2009 Act revoked the 8/16 Rule and extended the time limits for enrollment in an approved training course until 26 weeks after the layoff or the Secretary's certification. 2009 Act § 1821(a)(1). In addition, the 2009 Act addressed the problem of untimely claims due to "failure to provide the worker with timely information regarding the" time limits by extending the deadline for enrolling in an approved training course until a date determined by the Secretary of Labor. *Id.* § 1821(a)(4).[5] Moreover, in 2011, Congress again amended the Trade Act's requirements to reduce the number of waivers that were being granted from the training requirement and to allow the Secretary of

[5] The Secretary of Labor "has determined that the worker must be enrolled in training or receive a waiver by the Monday of the first week occurring 60 days after the date on which the worker was properly notified of both his/her eligibility to apply for [TRA benefits] and the requirement to enroll in training absent a waiver of the training requirement." Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009, 74 Fed. Reg. 50874, 50881 (Oct. 1, 2009).

Labor to provide waivers for good cause of the time limitations in the Trade Act. Trade Adjustment Assistance Extension Act of 2011, § 212, Pub. L. No. 112-40, 125 Stat. 401, 404 (2011).[6]

These amendments, which decrease the number of claimants eligible for waivers and also extend the time for them to enroll in an approved training program, make it much less likely that a potential claimant will seek a waiver of the training requirement outside of the deadlines set by the Trade Act for enrolling in an approved training program, and thus less likely that this issue will arise again in the future.

In addition, the 2009 and 2011 amendments to the Trade Act also make this a particularly unsuitable vehicle for considering the questions presented.[7]

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[6] Petitioner incorrectly argues that the 2011 amendments show that "Congress left the Department's interpretation of the training waiver deadline untouched . . . with express awareness of the Department's instruction that training waivers must be obtained within the 8/16 deadline." Pet. 17-18 (citing H.R. Rep. No. 111-16, at 665 (2009) (Conf. Rep.) (citing General Accounting Office Report 04-1012)). The Conference Report says nothing about "the Department's instruction that training waivers must be obtained within the 8/16 deadline," Pet. 18. To suggest that congressional intent can be determined from a GAO document cited in a Conference Report, with no discussion of the pertinent point in the Conference Report itself, is not plausible and certainly provides no basis for review by this Court.

[7] The 2011 legislative amendments do not apply to claims filed on or before October 20, 2011. See Pub. L. No. 112-40, § 201(b). The 2009 legislative amendments do not

Under those amendments, Ms. Gerstenschlager would not have been able to rely on her marketable skills to obtain a training waiver, and if she had enrolled in an approved training course, her application would not have been deemed untimely.

Specifically, Ms. Gerstenschlager received a waiver of the Trade Act's training requirements based on the fact that she "possesses marketable skills for suitable employment . . . and there [was] a reasonable expectation of employment at equivalent wages in the foreseeable future." CR 27. This basis for obtaining a training waiver, then codified at 19 U.S.C. § 2291(c)(1)(B), was narrowed by section 1821(b)(1) of the 2009 Act and then eliminated by section 212(a)(1)(A) of the Trade Adjustment Assistance Extension Act of 2011. The only remaining bases for obtaining a training waiver are inability to participate in training due to the health of the worker, unavailability of a position in an approved training program, and unavailability of training altogether. 19 U.S.C. § 2291(c)(1). Therefore, if she had been laid off under current law, Ms. Gerstenschlager likely would have been ineligible to obtain a training waiver.

At the same time, had she been laid off under current law, she likely would not have needed such a waiver. Her delay in seeking TRA benefits was due entirely to the incorrect information she received from Michigan Works!. Under the Secretary of Labor's implementation of the American Recovery and Reinvestment Act of 2009, Ms. Gerstenschlager

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apply to claims filed on or before May 17, 2009. See 2009 Act § 1891.

would have had at least sixty days to enroll in an approved training program after she learned from her friend that TRA benefits were in fact available. See n.5 supra.

Given Congress's amendments to the Trade Act, workers in Ms. Gerstenschlager's position will no longer be eligible for waivers from the training requirement, and they will have sufficient time to enroll in an approved training program if they receive erroneous information about their eligibility for TRA benefits. The Court should defer consideration of the legal issues presented in the petition until a case arises in factual circumstances of continuing relevance.

III. The Decision Below Is Correct.

This Court should also decline to review the decision below because it correctly applies the plain text of the Trade Act. Only Congress has the authority to apply the Trade Act's time limitations on training *enrollment* to training *waivers*. It did not do so when it created those time limitations in 2002, it did not do so when it amended the training enrollment time limitations in 2009, and it did not do so when it amended them again in 2011, several years after the decisions in *Vanguilder* and *Dykstra* were issued. This Court should not rewrite the plain text of Congress's statute, especially where Congress has repeatedly declined to do so.

The relevant statutory text is clear and straightforward. Under 19 U.S.C. § 2291(a)(5)(A), a worker seeking TRA benefits must meet one of three criteria: to be enrolled in a training program, to have completed a training program, or to have obtained a

waiver of the training requirement. In the Trade Act of 2002, Congress amended the first requirement to add the 8/16 Rule deadlines. The amendment was found in section 114(b) of the Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933, 939 (2002), which was entitled "Enrollment in Training Requirement." In the adjacent section of the Trade Act of 2002, Congress addressed "Waivers of Training Requirements," and despite making other changes to the rules governing waivers, it chose not to amend the existing time limitation on those waivers, *i.e.*, waivers cannot be granted until after the date on which the worker became totally separated, or partially separated, from the affected job. See *id.* § 115(b). Where Congress has explicitly addressed the timing requirements applicable to training waivers, there is no reason to imply other requirements from nearby statutory provisions that Congress chose not to include.

As *Dykstra* explained, "under a plain reading, it appears that Congress intended the timing deadlines stated in § 2291(a)(5)(A)(ii) to apply only to enrollments under § 2291(a)(5)(A)(i)." Pet. App. 23a. Reviewing the same history, *Vanguilder* concluded "the Act does not specify that the receipt of a waiver of training must occur within the same time frame as enrollment in a training program. The plain language of the statute does not support such an interpretation." *Vanguilder*, 2009 WL 1048503 at *3.

The plain text reading of the statute is far from absurd; *Dykstra* explains at length that the plain text reading is "consistent with the purpose behind the waiver provision and Congress's decision to limit the application of the deadlines stated in

§ 2291(a)(5)(A)(ii) to the enrollment provision found in § 2291(a)(5)(A)(i)." Pet. App. 25a.

It has long been settled that where "Congress has directly spoken to the precise question at issue . . . that is the end of the matter." *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984). That is the case here. For that reason, the conflicting interpretation advanced by the Department of Labor must be rejected.

Moreover, even if there were some ambiguity on the issue, which there is not, the guidance letter issued by the Department of Labor would not be entitled to deference under *Chevron*. First, it does not reflect a reasonable resolution of whatever statutory ambiguity exists. Second, the Training and Employment Guidance Letter on which Petitioner relies was not subject to notice and comment procedures. The letter makes clear that it is not intended to bind the general public: the letter states that it is published in the Federal Register "to inform the public" of a legal interpretation made by agency employees. Training and Employment Guidance Letter No. 11-02, Change 1, 69 Fed. Reg. 60903 (Oct. 13, 2004). It is therefore like the classification rulings in *United States v. Mead Corp.*, 533 U.S. 218, 231-35 (2001), that this Court found were not entitled to *Chevron* deference. "[L]ike interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law," the Department of Labor's Training and Employment Guidance Letters "do not warrant *Chevron*-style deference." *Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000).

Congress has repeatedly amended the requirements it places on workers claiming TRA benefits. It chose to place no specific deadline, other than the general deadline on applying for TRA benefits, on applying for training waivers. The decision whether to amend the Trade Act yet again to create a specific deadline for training waivers rests with Congress, not the courts.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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