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Federal Judge Grants Injunction to NCLA Client, Vacates Dept. of Ed.'s Discriminatory Fulbright Rule

Edgar Ulloa Lujan, Samar Ahmad, and Veronica Gonzalez v. U.S. Department of Education, et al.

Washington, DC (March 27, 2023) – Judge David C. Guaderrama of the U.S. District Court for the Western District of Texas has granted Plaintiff Veronica Gonzalez's Motion for Preliminary Injunction in a lawsuit challenging the U.S. Department of Education's discriminatory evaluation process for the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship. The New Civil Liberties Alliance brought *Edgar Ulloa Lujan, Samar Ahmad, and Veronica Gonzalez v. U.S. Department of Education, et al.* in opposition to the Department's "native language penalty." NCLA believes the rule unlawfully discriminates based on national origin, because it essentially disqualifies American citizens who immigrated here from non-English-speaking countries and children of such immigrants from receiving the Fulbright-Hays Fellowship to conduct dissertation research in any country that speaks the language of their national heritage.

Judge Guaderrama held that "the Department likely acted outside its statutory authority," so Ms. Gonzalez is likely to succeed on the merits of her statutory claim. The Court vacated the challenged regulation until the Department issues a revised rule, but it declined to reach the constitutional equal-protection issue in the case.

The Department had rejected Ms. Gonzalez's 2022 application to conduct research in Mexico under the Fulbright-Hays Fellowship. Specifically, it made her ineligible for the 15 points under the language-proficiency portion of the application (out of 106 total points) solely because Spanish is the language of her national heritage. This 15-point "native language penalty" knocked Ms. Gonzalez out of the running despite her near-perfect scores on the remainder of the application. While Ms. Gonzalez originally acquired Spanish from her immigrant parents, she improved her fluency throughout her American education, including in high school and university.

The Fulbright-Hays Act of 1961 requires the Department to award doctoral fellowships to promote "modern foreign language training." For decades, the Department defined "foreign language" to mean a language that is foreign to the United States, *i.e.*, a non-English language. In 1998, however, the Department redefined "foreign language" to mean a language that is foreign to the applicant, *i.e.,* a non-native language. Under this view, Ms. Gonzalez's native Spanish is not a "foreign language." NCLA argued that the 1998 definition is inconsistent with the text and purpose of the Fulbright-Hays Act and must be rejected. Judge Guaderrama agreed, holding that "definitions show that the meaning of 'foreign' is context dependent." The Court declined to defer to the Department's interpretation because, "Given the text, context, purpose, and history … Gonzalez is likely to show that Congress intended 'foreign language' to mean a language other than English." So, the fact that Ms. Gonzalez acquired Spanish via her national heritage no longer disqualifies her from receiving language proficiency points.

NCLA also argued that the 1998 regulation violates Ms. Gonzalez's equal-protection rights because penalizing her for her native language amounts to discrimination based on her national origin. Having decided the 1998 regulation was unlawful for statutory interpretation reasons under the Fulbright-Hays Act, Judge Guaderrama did not address this separate constitutional argument.

NCLA released the following statements:

"Judge Guaderrama correctly rejected the government's preposterous interpretation that Congress intended to promote training in languages that are 'foreign' to individuals as opposed to 'foreign' to the United States when it enacted a statute designed to promote relations between the United States and other countries. The court's decision represents a welcome departure from the decades-long trend of courts reflexively deferring to agencies' peculiar statutory interpretations without exercising independent judicial judgment."
— Sheng Li, Litigation Counsel, NCLA

"The court's decision prevents unelected bureaucrats from changing the language and meaning of the Fulbright-Hays Act, and it will allow talented Americans of every background to seek a Fellowship on a non-discriminatory footing."
— John J. Vecchione, Senior Litigation Counsel, NCLA

For more information, visit the case page here.

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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