IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHRISTOPHER L. CRANE et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**Civil Action No. 3:12-cv-03247-O**
	§	
JANET NAPOLITANO, *in her official capacity as Secretary of Homeland Security*, et al.,	§	
	§	
Defendants.	§	

ORDER

Pending before the Court is Plaintiffs' Application for Preliminary Injunctive Relief (ECF No. 24).[1] The Court held a hearing on this matter on April 8, 2013, and ordered the parties to submit additional briefing addressing the effect, if any, of the Collective Bargaining Agreement and the Civil Service Reform Act ("CSRA") on the Court's jurisdiction to hear the case. *See* Electronic Minute Entry, Apr. 8, 2013; Mem. Op. & Order 37, Apr. 23, 2013, ECF No. 58. The parties complied with the Court's request.

Accordingly, now before the Court are Plaintiffs' Amended Supplemental Brief in Support of Plaintiffs' Application for Preliminary Injunctive Relief (ECF No. 63), Defendants' Response to Plaintiffs' Supplemental Memorandum on the CSRA (ECF No. 67), and Plaintiffs' Supplemental Reply Brief Regarding the CSRA (ECF No. 71). Also before the Court are Defendants' Supplemental Memorandum on Why the CSRA Precludes Plaintiffs' Requested Relief (ECF No. 60), Plaintiffs' Responsive Supplemental Brief Regarding the CSRA (ECF No. 68), and Defendants'

[1] "Plaintiffs" throughout this Order refers to the ICE agent plaintiffs.

Reply to Plaintiffs' Responsive Supplemental Brief Regarding the CSRA (ECF No. 70). After considering the foregoing the Court concludes as follows:

I. FACTUAL & PROCEDURAL BACKGROUND

The Court set forth the factual and procedural background of this case in detail in its Memorandum Opinion and Order granting in part and denying in part Defendants' Motion to Dismiss and its Memorandum Opinion and Order deferring ruling on Plaintiffs' Application for Preliminary Injunction. *See* Mem. Op. & Order 1–4, Jan. 24, 2013, ECF No. 41; Mem. Op. & Order 2–5, Apr. 23, 2013, ECF No. 58. In its previous Order, the Court found that Congress's use of the word "shall" in Section 1225(b)(2)(A) of the Immigration and Nationality Act imposes a mandatory obligation on immigration officers to initiate removal proceedings against aliens they encounter who are not "clearly and beyond a doubt entitled to be admitted." Mem. Op. & Order 15–22, Apr. 23, 2013, ECF No. 58; *see* 8 U.S.C. § 1225(b)(2)(A); *see also In re: Application of USA for Historical Cell Site Data*, No. 11-20884, slip op. at 10–11 (5th Cir. July 30, 2013) (finding that the word "shall" in Section 2703(d) of the Stored Communications Act imposes a mandatory duty on courts to issue an order for disclosure when certain prerequisites are satisfied). Therefore, the Court concluded that Plaintiffs were likely to succeed on the merits of their claim that the Department of Homeland Security has implemented a program contrary to congressional mandate. However, the Court finds that Congress has precluded Plaintiffs from pursuing their claims in this Court by enacting the CSRA. Therefore, the Court finds that this case should be and is hereby **DISMISSED without prejudice** for lack of subject-matter jurisdiction.

II. ANALYSIS

Plaintiffs contend that the Court retains jurisdiction under 28 U.S.C. § 1331 to hear Plaintiffs'

Administrative Procedure Act and Declaratory Judgment Act claims because the threatened three-day suspension of Plaintiff James Doebler is outside the scope of the CSRA's remedial scheme. Pls.' Am. Supplemental Br. Supp. Appl. Prelim. Inj. 1–4, ECF No. 63; Pls.' Supplemental Reply Br. 8–9, ECF No. 71. Plaintiffs also contend that the Merit Systems Protection Board lacks jurisdiction to hear Plaintiffs' claims because Plaintiffs have yet to suffer an adverse action within the scope of the Merit Systems Protection Board's jurisdiction, and the CSRA does not extend to cases involving potential future adverse actions. Pls.' Responsive Supplemental Br. Regarding CSRA 1–2, 7, ECF No. 68. Additionally, Plaintiffs contend the Merit Systems Protection Board does not have the authority to issue an injunction against an allegedly unconstitutional and unlawful policy. *Id.* at 2–5.

Defendants argue that this Court lacks subject-matter jurisdiction to resolve Plaintiffs' claims because they are employment disputes and the CSRA provides a comprehensive and exclusive scheme for resolving employment disputes brought by federal employees against the federal government. Defs.' Supplemental Mem. on CSRA 2–11, ECF No. 60. Defendants further contend that Plaintiffs' asserted claims are within the scope of the CSRA's exclusive and comprehensive administrative and judicial remedies; therefore, Plaintiffs are bound to follow the procedures set forth in the CSRA and this Court lacks jurisdiction. *See* Defs.' Supplemental Mem. on CSRA 10–11, ECF No. 60; Defs.' Resp. Pls.' Supplemental Br. 7–8, ECF No. 67; Defs.' Reply Regarding CSRA 1–3, 7–8, ECF No. 70. The Court finds that the CSRA precludes review of Plaintiffs' claims in this Court.

Congress enacted the CSRA as "a comprehensive system for reviewing personnel action taken against federal employees." *United States v. Fausto*, 484 U.S. 439, 455 (1988); *see Bush v. Lucas*, 462 U.S. 367, 368, 388–90 (1983). The CSRA's remedies are "the comprehensive and

exclusive procedures for settling work-related controversies between federal civil-service employees and the federal government." *Rollins v. Marsh*, 937 F.2d 134, 139 (5th Cir. 1991) (citing *Fausto*, 484 U.S. 439; *Bush*, 462 U.S. 367). Thus, when a particular employee's class or asserted claim has been excluded from the CSRA's framework for administrative and judicial review of adverse personnel actions, that excluded employee cannot seek redress in a federal district court. *See Fausto*, 484 U.S. at 455; *Graham v. Ashcroft*, 358 F.3d 931, 935 (D.C. Cir. 2004) (finding that the CSRA precluded judicial review of a federal employee's claim challenging a letter of censure, which was "below the CSRA minima for both major and minor adverse employment actions"); *Carducci v. Regan*, 714 F.2d 171, 173–75 (D.C. Cir. 1983) (finding that judicial review was unavailable under the Administrative Procedure Act with respect to employment claims as to which the CSRA provided no relief to anyone, because the alleged adverse actions were too minor); *Galvin v. FDIC*, 48 F.3d 531, at *4 (5th Cir. 1995) (per curiam) (not selected for publication) (noting that the lack of a remedy under the CSRA precludes a plaintiff "from bringing suit challenging the personnel action in federal court"). Furthermore, the CSRA precludes district-court adjudication of a covered employee's challenge to a covered adverse employment action, even when the employee raises constitutional challenges to federal statutes and seeks equitable relief. *Elgin v. Dep't of Treasury*, 132 S. Ct. 2126, 2132–33, 2139 (2012); *see Dooley v. Principi*, 250 F. App'x 114, 116 (5th Cir. 2007) (per curiam) (not selected for publication) (noting that "[t]he CSRA provides the exclusive remedy for claims against federal employers, thereby precluding any causes of action relating to employment disputes covered by the statute" (citing *Grisham v. United States*, 103 F.3d 24, 26 (5th Cir. 1997))).

Here, Plaintiffs' injury is based on being compelled to violate a federal statute upon pain of

adverse employment action. *See* Pls.' Resp. Mot. Dismiss 2–7, ECF No. 30; Mem. Op. & Order 18–22, Jan. 24, 2013, ECF No. 41. Plaintiffs allege that Defendants have taken disciplinary action against Plaintiff James D. Doebler and threatened to take disciplinary action against the remaining plaintiffs if they fail to comply with the Directive and Morton Memorandum by issuing Notices to Appear to Directive-eligible aliens as required by law. Pls.' Am. Compl. ¶¶ 6, 49–51, ECF No. 15; App. Pls.' Resp. Mot. Dismiss Ex. 3 (Doebler Aff.), ¶¶ 2–9, ECF No. 31; *Id.* Ex. 2 (Engle Aff.), ¶¶ 8, 20; *see* 8 U.S.C. § 1225(b)(2)(A); Morton, John, "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" (the "Morton Memorandum"), *available at* http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf; *see also* Pls.' Am. Compl. Ex. 1 (Napolitano, Janet, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (the "Directive")), ECF No. 15-1. Plaintiffs argue that they should not be disciplined for failing to comply with the Directive and Morton Memorandum because those documents and the Deferred Action for Childhood Arrivals program they implement conflict with the Immigration and Nationality Act and violate the Constitution and the Administrative Procedure Act. Pls.' Am. Compl. ¶¶ 48–49, 67–80, 92–116, ECF No. 15; *see* 8 U.S.C. § 1225(b)(2)(A). Plaintiffs seek a declaratory judgment from the Court finding the Directive unlawful and in violation of federal statutes and the Constitution, as well as an injunction preventing the implementation of the Directive and prohibiting Defendants from taking disciplinary action against Plaintiffs for failure to comply with the Directive. Pls.' Am. Compl. ¶¶ A–F, ECF No. 15.

Plaintiffs—federal employees—assert claims against the federal government based on retaliatory acts, or threats thereof, taken by their supervisors. Although they bring their dispute

pursuant to the United States Constitution and the Administrative Procedure Act, their claims are based on their challenge to the Deferred Action for Childhood Arrivals program after Plaintiffs' non-compliance with the program led to the threat of workplace disciplinary action against them. The above-referenced authorities command that this dispute be governed by the CSRA's comprehensive and exclusive remedial scheme provided by Congress. Therefore, this Court does not have subject-matter jurisdiction to address Plaintiffs' claims.[2] While the Court finds that Plaintiffs are likely to succeed on the merits of their claim challenging the Directive and Morton Memorandum as contrary to the provisions of the Immigration and Nationality Act, *see generally* Mem. Op. & Order, Apr. 23, 2013, ECF No. 58, Congress has determined that this Court does not have jurisdiction over Plaintiffs' disputes. As a result, the Court must dismiss Plaintiffs' claims without prejudice.[3]

The Court notes that this case has been pending for several months, and the preclusive effect of the CSRA on the Court's jurisdiction was not fully addressed until the Court ordered the parties to submit additional briefing. *See* Mem. Op. & Order 36–37, Apr. 23, 2013, ECF No. 58.

---

[2] The Court finds it unnecessary to determine whether Plaintiffs have an available remedy under the CSRA. The Supreme Court has stated that Congress enacted the CSRA as a comprehensive and exclusive scheme for resolving federal employment disputes. *Fausto*, 484 U.S. at 455. If the CSRA provides a remedy for Plaintiffs' challenged disciplinary action, then the CSRA's remedy is Plaintiffs' exclusive avenue for redressing their claims. *See Elgin*, 132 S. Ct. at 2132–33. S*ee, e.g.*, 5 U.S.C. §§ 1214(a)(1), 1214(a)(3), 2302(a)(1), 2302(a)(2)(A)(iii), 2302(b)(9)(D) (providing that certain federal employees may seek corrective action from the Office of Special Counsel when a supervisory employee takes or threatens to take "disciplinary or corrective action" against the employee for "refusing to obey an order that would require the individual to violate a law"). If the CSRA does not provide a remedy for Plaintiffs' challenged disciplinary action (for example, because the disciplinary action is too minor), then a federal district court cannot provide relief because it would be affording a greater remedy than that provided by the CSRA. *See Fausto*, 484 U.S. at 455; *Graham*, 358 F.3d at 935. Under either scenario, this Court does not have subject-matter jurisdiction over Plaintiffs' federal employment disputes.

[3] Given the Court's determination that the CSRA deprives the Court of subject-matter jurisdiction over Plaintiffs' claims, the Court finds it unnecessary to address the preclusive effect, if any, of the Collective Bargaining Agreement on Plaintiffs' claims.

Defendants raised this issue in a footnote in their Motion to Dismiss and addressed the argument in a few sentences in their reply brief. *See* Defs.' Mot. Dismiss 11 n.3, ECF No. 23; Defs.' Reply Mot. Dismiss 5, ECF No. 33. They again addressed this issue in their opposition to Plaintiffs' Application for Preliminary Injunctive Relief, but in no greater detail than at the motion-to-dismiss stage. *See* Defs.' Opp'n Appl. Prelim. Inj. 16, ECF No. 34. The Court regrets that Defendants unreasonably expended so much of this Court's time before this issue could be fully addressed and resolved.

III. CONCLUSION

Based on the foregoing, it is **ORDERED** that Plaintiffs' claims are **DISMISSED without prejudice** for lack of subject-matter jurisdiction.

SO ORDERED on this **31st day** of **July, 2013.**

Reed O'Connor
UNITED STATES DISTRICT JUDGE