

FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Maria Muniz-Muniz, et al.,

Case No. 3:09 CV 2865

Plaintiffs,

O R D E R

-vs-

JUDGE JACK ZOUHARY

United States Border Patrol,
Customs and Border Protection,
Department of Homeland Security, et al.,

Defendants.

While presently denying Federal Defendants' Motion to Dismiss / Motion for Summary Judgment (Doc. No. 62), this Court questions whether subject matter jurisdiction is proper with respect to the declaratory and injunctive relief sought in Plaintiffs' Claims One, Two, and Three.

Plaintiffs argue jurisdiction is proper under 28 U.S.C. § 1331 and the Administrative Procedure Act (APA), 5 U.S.C. § 702 (Doc. No. 68, pp. 7-8). It is true that Section 1331 grants broad jurisdictional authority to this Court. However, it does not waive sovereign immunity for Federal Defendants. *City of Albuquerque v. U.S. Dep't of Interior*, 379 F.3d 901, 907 (10th Cir. 2004). As stated by the Supreme Court in *Califano v. Sanders*, 430 U.S. 99, 105 (1977), the Section 702 language must be read in conjunction with Section 703, which suggests that the APA remedies under Section 702 must be paired with other jurisdictional statutes to waive sovereign immunity. *See City of Albuquerque*, 379 F.3d at 907; *Consejo de Desarrollo Economico de Mexicali, A.C. v. U.S.*, 482 F.3d 1157, 1174 (9th Cir., 2007).

Because the only other statutory bases cited by Plaintiffs in Claims One, Two, and Three do not support a private right of action, this Court is skeptical of having proper subject matter jurisdiction over the requested equitable portions of these Claims. *See Chairez v. U.S. Immigration and*

Naturalization Service, 790 F.2d 544, 548 (6th Cir. 1986) (finding no private right of action under 8 U.S.C. § 1357); *Navarro-Chalan v. Ashcroft*, 359 F.3d 19, 23 (1st Cir. 2004) (quoting 8 C.F.R. § 287.11) (“[Section] 287.3 and the other regulations in its subpart ‘do not, are not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.’”)

This issue can be further addressed by the parties, if necessary during later briefing.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

September 29, 2010