UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOBY STOVER,

Plaintiff,

v.

NATIONAL PARK SERVICE, et al.,

Defendants.

Civil Action No. 24-0639 (TJK)

DEFENDANTS' MOTION TO DISMISS

Defendants, by undersigned counsel, respectfully move to dismiss the Amended Complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The grounds for this motion are set forth more fully in the accompanying supporting memorandum.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOBY STOVER, *Plaintiff,* v. NATIONAL PARK SERVICE, et al., *Defendants*.	Civil Action No. 24-0639 (TJK)

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Defendants the National Park Service, its Director and the Department of the Interior, by and through undersigned counsel, file this memorandum in support of their motion to dismiss the Amended Complaint in this action. The Amended Complaint contends that an alleged program of the Park Service to accept only non-cash payment methods for park entrance fees is contrary to law and thus should be set aside under the Administrative Procedures Act ("APA").

As discussed below, the Amended Complaint should be dismissed on two threshold grounds. First, Plaintiff fails to allege that she personally lacks access to non-cash payment methods and thus has not plausibly alleged that she has been harmed by the challenged policy, or that she faces imminent future harm from it, as is necessary to establish her standing to sue. Second, Plaintiff has failed to state a claim on which relief can be granted because the statute on which she relies to characterize the alleged cashless program as unlawful, 31 U.S.C. § 5103, does not require the Park Service to accept cash for the services it provides.[1] *See, e.g.*, *Picano v.*

[1] Although Plaintiff brings an APA claim, the production of an administrative record at this stage is unnecessary—the United States seeks to dismiss this case not based on an administrative record, but instead based on the Amended Complaint's allegations. *See US Inventor, Inc. v. Patent & Trademark Off.,* Civ. A. No. 22-2218 (JDB), 2023 U.S. Dist. LEXIS 119316, at *27 (D.D.C.

Emerson, 353 F. App'x 733, 735 (3d Cir. 2009) ("None of the cases cited by plaintiff stands for the proposition that § 5103 requires a local government (or any other entity) to accept payment in cash, and no court has so held.").

BACKGROUND

I. Procedural Background

This case originally was brought by three Plaintiffs, each contending that they were told by the Park Service on separate occasions that the Park Service would not accept cash for entrance fees in the national parks they attempted to visit. Defendants moved to dismiss the Complaint for lack of standing and failure to state a claim. *See* Mot. to Dismiss (ECF No. 13).

On February 21, 2025, the Court granted Defendants' motion, finding that Plaintiffs had not adequately alleged that they had standing to challenge the Park Service's alleged cashless entry policy. Order (ECF No. 17) at 5. The Court found standing insufficient on two specific grounds. First, although Plaintiffs sought prospective declaratory and quasi-injunctive relief to set aside the alleged policy, they failed to allege that they had "concrete plans" to visit national parks in the future sufficient to support a finding of imminent injury. *Id.* at 3. Second, an alleged statutory violation standing alone fails to satisfy the injury-in-fact requirement for standing. *Id*. at 4.

Before finally dismissing the case, the Court afforded Plaintiffs the opportunity to seek leave to file an Amended Complaint by March 7, 2025. *Id*. at 5. Prior to that date, only one of the three Plaintiffs (Plaintiff Stover) did so. (ECF No. 18-1). Defendants did not oppose that motion but reserved their right to renew their motion to dismiss. Because the Amended Complaint still fails to plausibly plead standing and, separately, fails to state a claim, it should be dismissed.

July 12, 2023). Accordingly, the requirement of the local rules to produce an administrative record with the filing of this dispositive motion does not apply. *See id.*; *see also* LCvR 7(n).

II. Factual Background

Plaintiff Toby Stover is an adult individual who alleges that she desired to tender cash to pay the entrance fee at a site managed by the National Park Service (Hyde Park) and was advised that cash was not accepted at that location. Am. Comp. (ECF No. 19) ¶ 20. Based on this single example, Plaintiff alleges that the Park Service has enacted a "cashless entrance-fee payment" program that requires parks to accept only non-cash methods of payment. *Id.* ¶ 4. Recognizing that, at the motion to dismiss stage, the Court must accept as true the allegations in the Amended Complaint and draw all reasonable inferences in favor of the Plaintiff, Defendants are not addressing that incorrect assertion in this motion, but reserve the right to do so at a later date, should this case proceed beyond the pleadings stage.

Even if such a cashless program existed, Plaintiff fails to allege facts that could raise a plausible inference that she has been harmed by it and will be harmed by it in the future. She does not allege that she lacks access to credit or debit cards and thus was unable to use those forms of payment to satisfy the entrance fee. Her contention instead is that she was unable to pay by her preferred method, cash, and chose not to pay by other available means based on principle, namely, her alleged belief that it is her lawful right to pay in cash. *Id.* ¶¶ 20-22. Plaintiff does not allege any specific "concrete plan" to visit the park in the near future but contends only vaguely that she "still wants to visit" but "will not do so if she continues to be denied her right to tender anything other than legal U.S. Currency." *Id.* ¶ 22. That single, vague allegation appears to be Plaintiff's sole attempt to address the defects identified by the Court in its February 21, 2025 decision.

Plaintiff bases her claim that the alleged policy is unlawful under the APA on 31 U.S.C. § 5103, which states in relevant part that "United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues." Contending that the alleged cashless entrance-fee

program violates this statutory provision, the Amended Complaint asserts a claim under the APA to set the alleged program aside as contrary to law (count one) and seeks a declaration to the same effect under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02 (count two). Although the Amended Complaint also alleges that the Park Service's "conduct" violates the "Constitution," the only Constitutional provision cited is the provision granting Congress the power to coin money and regulate its value. Am. Compl. (ECF No. 19) ¶ 24. Accordingly, Plaintiff has not pled an alleged violation of the Constitution but bases her claim solely on an alleged violation of section 5103, a statute enacted pursuant to the referenced Constitutional authority. *Id*. ¶ 35.

LEGAL STANDARD

I. Rule 12(b)(1) Standard

A motion to dismiss under Federal Rule of Civil Procedure ("Rule") 12(b)(1) "presents a threshold challenge to the Court's jurisdiction," and thus "the Court is obligated to determine whether it has subject-matter jurisdiction in the first instance." *Curran v. Holder*, 626 F. Supp. 2d 30, 32 (D.D.C. 2009) (internal citation and quotation marks omitted). "[I]t is presumed that a cause lies outside [the federal courts'] limited jurisdiction," *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994), unless the plaintiff can establish by a preponderance of the evidence that the Court possesses jurisdiction. *See, e.g.*, *United States ex rel. Digital Healthcare, Inc. v. Affiliated Computer*, 778 F. Supp. 2d 37, 43 (D.D.C. 2011) (citing *Hollingsworth v. Duff*, 444 F. Supp. 2d 61, 63 (D.D.C. 2006)). Thus, the "'plaintiff's factual allegations in the complaint . . . will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim.'" *Id.* (quoting *Grand Lodge of Fraternal Order of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13-14 (D.D.C. 2001) (internal citation and quotation marks omitted)).

When a defendant makes a facial challenge under Rule 12(b)(1), the district court must accept the allegations contained in the complaint as true and consider the factual allegations in the

light most favorable to the non-moving party. *Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 164 (1993); *see also Erby v. United States*, 424 F. Supp. 2d 180, 182 (D.D.C. 2006). Motions to dismiss based on a lack of standing are properly considered under Rule 12(b)(1) because standing is a "predicate[] to jurisdiction." *Bazzi v. Gacki,* 468 F. Supp. 3d 70, 75 (D.D.C. 2020).

II. Rule 12(b)(6) Standard

A Rule 12(b)(6) motion tests the legal sufficiency of a complaint. In ruling on a motion to dismiss, the Court "must construe the complaint in a light most favorable to the plaintiff and must accept as true all reasonable factual inferences drawn from well-pleaded factual allegations." *Jovanovic v. U.S.-Algeria Bus. Council*, 561 F. Supp. 2d 103, 110 (D.D.C. 2008).

Although "detailed factual allegations" are not necessary to survive a Rule 12(b)(6) motion to dismiss, a plaintiff must furnish "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 555 (2007). The facts alleged "must be enough to raise a right to relief above the speculative level," *id*. at 555, or must be sufficient to "state a claim for relief that is plausible on its face," *id*. at 570. The plausibility standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 678 (2009).

ARGUMENT

I. The Amended Complaint Should Be Dismissed Due to Plaintiff's Lack Of Standing

Plaintiff's claim fails at the threshold for lack of standing. Standing is a necessary predicate to any exercise of federal jurisdiction and, when it is lacking, the dispute fails to present a concrete case or controversy under Article III. *Ariz. Christian Sch. Tuition Org. v. Winn,* 563 U.S. 125, 133-34 (2011); *Dominguez v. UAL Corp.,* 666 F.3d 1359, 1361 (D.C. Cir. 2012). To establish standing, Plaintiff must demonstrate that she individually suffered an injury-in-fact, specifically

an injury that is "'concrete, particularized, and actual or imminent;'" that the injury is "'fairly traceable to the challenged action;'" and that it is "likely," not speculative, that the injury is "'redressable by a favorable ruling.'" *Clapper v. Amnesty Int'l,* 568 U.S. 398, 409 (2013); *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992).

Plaintiff bears the burden of establishing each element. *Lujan,* 504 U.S. at 561. Standing, moreover, is "'not dispensed in gross.'" *Davis v. FEC*, 554 U.S. 724, 734 (2008). "Rather, 'a plaintiff must demonstrate standing for each claim [s]he seeks to press' and 'for each form of relief' that is sought." *Id.* Here, because Plaintiff seeks solely prospective relief, she must sufficiently allege that she faces an imminent threat of future harm to have standing to seek that relief. *City of Los Angeles v. Lyons*, 461 U.S. 95, 105, 109 (1983). It is well settled that "'[a]n allegation of future injury'" to support the injury-in-fact element of standing "passes Article III muster only if it 'is 'certainly impending,' or there is a 'substantial risk' that the harm will occur.'" *In re Off. of Pers. Mgmt. Data Sec. Breach Litig. ("OPM")*, 928 F.3d 42, 54 (D.C. Cir. 2019); *see also Kareem v. Haspel*, 986 F.3d 859, 865 (D.C. Cir. 2021) ("Because [plaintiff's] complaint 'seeks prospective declaratory and injunctive relief, he must establish an ongoing or future injury that is 'certainly impending'; he may not rest on past injury.'"). In addition to being "'certainly impending,'" *Kareem*, 986 F.3d at 865, allegations of future injury, moreover, must be "particular and concrete." *Steel Co. v. Citizens for a Better Env't.,* 523 U.S. 83, 109 (1998). To meet her burden of establishing standing at the pleadings stage, Plaintiff must "make a plausible allegation of facts establishing each element of standing." *Cutler v. Dep't of Health & Hum. Servs.,* 797 F.3d 1173, 1179 (D.C. Cir. 2015).

Plaintiff contends that 31 U.S.C. § 5103 requires the National Park Service to accept cash for entrance fees and that the Park Service has violated that statutory provision by implementing a

"cashless entrance-fee payment scheme." Am. Compl. (ECF No. 19) ¶ 4. But, even if that were a correct reading of that statute (it is not, as addressed in Section II below), Plaintiff still must plausibly plead facts establishing that she personally was harmed by this alleged cashless program and faces the risk of imminent future harm. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016). Thus, even if section 5103 confers a right on individuals to pay cash as Plaintiff alleges, a plaintiff does not "automatically satisf[y] the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." *Id.* Instead, "Article III standing requires a concrete injury even in the context of a statutory violation" and, "[f]or that reason, [a plaintiff] could not, for example, allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement." *Id.*

Here, the harm Plaintiff alleges she experienced was the inability to access a national park site on a single occasion on January 26, 2024, because the park did not accept cash. Am. Compl. (ECF No. 19) ¶ 20. She alleges that she "still wants to visit [the park] whenever she wants but will not do so if she continues to be denied her right to tender anything other than legal U.S. Currency." *Id*. ¶ 22. Plaintiff alleges that the park, per its website, only will accept credit or debit cards for the entrance. *Id*. Plaintiff, however, does not allege that she lacks access to credit or debit cards or that, were she to use such means of payment, she would incur additional charges from her bank.

Plaintiff cannot rely on principle to satisfy the jurisdictional requirement of standing but must have standing in her own right by pleading that she faces imminent harm due to the challenged practice. *Spokeo,* 578 U.S. at 339-41. Because Plaintiff does not allege that she is unable to pay the entrance fee by non-cash methods, the challenged cashless entry program caused no harm to her personally in the past and creates no risk of harm to her in the future. Nor has she alleged any "concrete plan" to visit the park in the immediate future that would establish the

requisite imminence. Her vague assertion that she "wants to visit" sometime in the future is insufficient to assert a concrete, particularized injury that can support the requested prospective relief.

Moreover, to the extent Plaintiff is choosing not to visit the park, that lack of access is self-inflicted, based on personal choice grounded in principle. Article III standing, however, "screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action," and thus "a citizen does not have standing to challenge a government regulation simply because the plaintiff believes that the government is acting illegally." *FDA v. All. for Hippocratic Med*., 602 U.S. 367, 381 (2024).

This case is analogous to *Weissman v. National Railroad Passenger Corporation*, 21 F. 4th 854 (D.C. Cir. 2021), where plaintiffs sought to prevent Amtrak from imposing an arbitration requirement on rail passengers by including a mandatory arbitration provision as a term of rail passage. They attempted to rely on cases holding that consumers have standing to challenge government action that prevents "'consumers from purchasing a desired product,'" which in their case was purchasing rail tickets on "the terms they would prefer" rather than those imposed on them by Amtrak. *Id*. at 857. The plaintiffs alleged that they were "prevented from purchasing their desired product because an Amtrak rail ticket without an arbitration clause is no longer on the market as a result of Amtrak's new term of service." *Id*. at 859. *Weissman* rejected this argument because the "desired product" at issue "is only distinguished from the available alternative by an ancillary term: the arbitration provision," rather than by a "core" feature of the product. *Id.* In the court's view, the applicable "concrete consumer interest"—or "core" feature of the product—was traveling on Amtrak, "not in purchasing an Amtrak ticket without an arbitration provision." *Id*. at 860. Because the plaintiffs "assert[ed] only one cognizable interest,

the interest in purchasing tickets to travel by rail," the new ancillary term of service did "not meaningfully abridge[] that interest" as would be required to establish standing. *Id.* at 861.

Here, the applicable "concrete consumer interest" is in visiting a specific national park. The ancillary requirement associated with that access, namely, an alleged cashless entrance fee requirement, does not "meaningfully abridge[] that interest" because Plaintiff has not pled that she personally lacks access to noncash methods of payment. Her preference to visit a national park by paying the entrance fee in cash is insufficient for the same reason the preference to purchase an Amtrak ticket without an arbitration clause was found wanting in *Weissman*. Standing cannot be established "simply by redefining any sweeping 'gripe' as the inability to obtain a product that negates that 'gripe.'" *Weissman*, 21 F. 4th at 860. Or, stated another way, standing is unavailable to plaintiffs who have only a "general legal, moral, ideological, or policy objection to a particular government action" but are not otherwise harmed by it in a particularized, concrete manner. *All. for Hippocratic Med*., 602 U.S. at 381.

Just as the plaintiffs in *Weissman* lacked standing to the extent they declined to purchase a rail ticket with the objected-to arbitration provision, and thereby were unable to travel on Amtrak as a result of that personal choice, the Plaintiff here lacks standing to the extent she chooses not to enter a national park by declining to utilize available noncash methods of payment. Any alleged future harm to Plaintiff is not the result of the alleged cashless entry program but personal choice. Such voluntarily assumed harm is insufficient to satisfy the requirements for standing. *Huron v. Berry,* 12 F. Supp. 3d 46, 52 (D.D.C. 2013) (citing *Petro-Chem Processing, Inc. v. EPA,* 866 F.2d 433, 438 (D.C. Cir. 1989); *Grocery Mfrs. Ass'n v. EPA,* 693 F.3d 169, 177 (D.C. Cir. 2012)). Indeed, the D.C. Circuit has "consistently held that self-inflicted harm doesn't satisfy the basic requirements for standing" because it is neither a cognizable "'injury,'" nor is it "fairly traceable

to the defendant's challenged conduct." *Nat'l Family Planning & Reprod. Health Ass'n, Inc. v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006). Thus, the Amended Complaint should be dismissed for lack of standing.

II. Section 5103 Does Not Require the Acceptance of Cash.

Plaintiff attempts to assert a claim under the APA on the sole basis that the alleged cashless entry program by the Park Service violates section 5103 and thus should be set aside as contrary to law pursuant to 5 U.S.C. § 706(2)(A). But "[t]here is simply no legal support for the idea that '[section] 5103 requires . . . any . . . entity[] to accept payment in cash.'" *Erdberg v. On Line Info. Servs., Inc.*, Civ. A. No. 12-3883, 2013 U.S. Dist. LEXIS 145760, at *13-14 (N.D. Ala. Oct. 9, 2013) (collecting cases). The Third Circuit, for instance, has rejected "the proposition that [section] 5103 requires a local government (or any other entity) to accept payment in cash" and observed that "no court has so held." *Picano*, 353 F. App'x at 735.

Section 5103 is properly understood as merely identifying United States "coins and currency" and "Federal reserve notes" as legal tender that can discharge a debt. *See generally* James Steven Rogers, *The New Old Law of Electronic Money*, 58 SMU L. Rev. 1253, 1275 (2005). It has no bearing on "whether a provider of goods or services is obligated to take a certain payment device." *Id*. And, regardless, non-cash methods of payment—such as by credit or debit card—are not a restriction on "the substance of payment but on its form." *Tenn. Scrap Recyclers Ass'n v. Bredesen,* 556 F.3d 442, 458 (6th Cir. 2009) ("requirement that dealers pay for air conditioning coils (a common target for thieves) with a check or money order mailed to a licensed HVAC contractor after a three-day wait" does not violate section 5103).

Plaintiff cites no authority to the contrary in the context at issue here, namely, where the government is acting as a provider of goods or services as opposed to a taxing authority or collecting a debt owed under a contract. Only the latter are encompassed by section 5103, as its

legislative history demonstrates. The original version of the statute applied "only to debts, in the strict sense of that term"—that is debts arising from contractual obligations—and not to obligations arising from taxes, as was noted in *Hagar v. Reclamation Dist. No. 108*, 111 U.S. 701 (1884). *Id.* at 706 (holding that the original legal tender statute applied to debts arising from contracts and not to a tax assessed by a reclamation district).

In 1965, the statute was amended into substantially its current form. Pub. L. 89–81, § 102. In 1982, when it was recodified into Title 31 of the U.S. Code, the phrase "public charges, taxes, duties, and dues" was initially omitted on the assumption that those terms were already encompassed within the term "debts" and were thus redundant. *See* Pub. L. 97–258; *see also* 31 U.S.C. § 5103 Historical and Revision Notes, 1982 Act ("The words 'public charges, taxes, duties, and dues' are omitted as included in 'debts.'"). The omission of that phrase in favor of the term "debts" standing alone confirms that Congress understood the statute as being limited to the discharge of debts as that term is ordinarily understood, that is, the discharge of an outstanding financial obligation arising under law.

In 1983, in recognition of the narrow definition of "debts" that had been applied in *Hagar* (i.e., limiting the term to financial obligations arising from contracts and not taxes), the phrase "public charges, taxes, and dues" was reinserted. *See* Pub. L. 97–452, §1(19); *see also* 31 U.S.C. § 5103 Historical and Revision Notes, 1983 Act (stating that the amendment "restores to 31:5103 the reference to public charges, taxes, and dues because they are not considered to be debts," citing *Hagar*). The 1983 revision thus confirmed the application of the statute to all forms of debts, to include debts as narrowly defined in *Hagar* as well as debts arising from other legal obligations such as taxes of the sort assessed in *Hagar* but deemed by that case to fall outside a strict definition

of the term. Nothing in the legislative history nor anywhere else suggests that the statute can apply to anything beyond the discharge of debts, however defined.

The payment of an entrance fee to access a national park is not a debt under any definition of that term. Instead, it is a contemporaneous payment for a good or service.[2] Thus, Plaintiff misstates the issue by relying on the conclusion of an IRS legal memorandum that section 5103 requires Taxpayer Assistance Centers "to accept cash from taxpayers for the payment of taxes." Am. Comp. (ECF No. 19) ¶ 29. Equally misplaced is Plaintiff's excerpt from the Federal Reserve website, interpreting section 5103 to "mean[] that all U.S. money as identified [in the statute] is a valid and legal offer of payment for debts when tendered to a creditor." *Id.* ¶ 23. Again, neither scenario—taxes owed the government or debts owed to a creditor—is applicable here. The statute is not focused on the entity involved in the transaction (private business or government), but the nature of the financial obligation to be discharged (i.e., to satisfy a tax or debt on a contract).

As section 5103 is the sole basis for Plaintiff's APA claim, count one should be dismissed for failure to state a claim. Moreover, because the Declaratory Judgment Act does not provide an independent cause of action, *Ali v. Rumsfeld*, 649 F.3d 762, 778 (D.C. Cir. 2011), count two should be dismissed on the same basis.

* * *

[2] Entrance fees are used to improve the visitor experience and recreation opportunities in national parks and on other federal lands. *See* https://www.nps.gov/aboutus/fees-at-work.htm#:~:text=Why%20does%20the%20National%20Park,and%20on%20other%20federal%20lands. (last visited Apr. 28, 2025). They are paid by visitors to the park (not the public at large) in exchange for receiving a good or service, an improved visitor experience at the park.

CONCLUSION

For the foregoing reasons, Defendants' motion should be granted and this action should be dismissed.

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