UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEDERAL DEFENDERS OF NEW YORK, INC., on behalf of itself and its clients detained at the Metropolitan Detention Center – Brooklyn,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS and WARDEN HERMAN QUAY, in his official capacity,

Defendants.

ORDER
19-CV-660 (MKB)

MARGO K. BRODIE, United States District Judge:

Plaintiff Federal Defenders of New York, Inc. commenced the above-captioned action on February 4, 2019, against Defendants the Federal Bureau of Prisons (the "BOP") and Warden Herman Quay, challenging the cancellation of legal and social visits at the Metropolitan Detention Center (the "MDC") in Brooklyn, New York, pursuant to the Sixth Amendment of the United States Constitution, U.S. Const. amend. VI, and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) ("APA"). (Compl., Docket Entry No. 1.) Plaintiff, proceeding by order to show cause, sought an order to restrain and enjoin Defendants from failing to permit (1) daily legal visitation for all inmates at the MDC; and (2) social visitation for all inmates in accordance with the MDC's normal schedule and procedure. (Pl. Unsigned Order to Show Cause, Docket Entry No. 3.) On March 1, 2019, the Court heard argument on Plaintiff's application for injunctive relief and, as discussed on the record, denied Plaintiff's application — finding that, pursuant to the Supreme Court's decision in *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 127 (2014), despite having Article III constitutional standing to

bring this case on behalf of its clients, Plaintiff does not have a cause of action under the Sixth Amendment or the APA. (Tr. of Oral Argument held on Mar. 1, 2019 ("Tr.") 45:5–25–46:1–6.) The Court granted Plaintiff leave to amend the Complaint. (*Id*. at 46:10–11.)

On March 29, 2019, Plaintiff filed a letter informing the Court that it will not amend the Complaint. (Pl. Ltr. dated Mar. 29, 2019, Docket Entry No. 30.) Plaintiff's letter also states that it anticipates that Defendants would move to dismiss the Complaint or that the Court would dismiss the Complaint *sua sponte*.[1] (*Id*.) Defendants agree that the Court can dismiss this action *sua sponte*. (Defs. Ltr. dated Apr. 3, 2019, Docket Entry No. 31.) As discussed below, the Court *sua sponte* dismisses the Complaint.

I. Discussion

a. Standard of review

"'The district court has the power to dismiss a complaint *sua sponte* for failure to state a claim' . . . so long as the plaintiff is given notice and 'an opportunity to be heard.'" *Wachtler v. Cty. of Herkimer*, 35 F.3d 77, 82 (2d Cir. 1994) (first quoting *Leonhard v. United States*, 633 F.2d 599, 609 n.11 (2d Cir. 1980); and then quoting *Thomas v. Scully*, 943 F.2d 259, 260 (2d Cir. 1991)); *see also FPP, LLC v. Xaxis US, LLC*, --- F. App'x ---, ---, 2019 WL 1552344, at *2 (2d Cir. Apr. 10, 2019) (affirming district court's *sua sponte* dismissal of claim and holding that the court "will reverse a district court's *sua sponte* dismissal if the court 'gave the parties no advance notice that dismissal was contemplated and afforded them no opportunity to brief the question'" (quoting *McGinty v. New York*, 251 F.3d 84, 90 (2d Cir. 2001))); *Grant v. County of Erie*, 542 F.

[1] By letter dated April 4, 2019, Plaintiff states that, while it opposes dismissal of the Complaint, it agrees that the "Court's legal ruling precludes [Plaintiff] from pursuing their claims at present," and Plaintiff "reserve[s] all rights to challenge the Court's conclusion" through an appeal. (Pl. Ltr. dated Apr. 4, 2019, Docket Entry No. 32.)

App'x 21, 24 (2d Cir. 2013) ("[A] district court may dismiss an action *sua sponte* for failure to state a claim so long as the plaintiff is given notice of the grounds for dismissal and an opportunity to be heard.").

b. Plaintiff does not have a cause of action under the Sixth Amendment or the APA

In opposing Plaintiff's application for injunctive relief, Defendants argued that, as an initial matter, the Court lacked subject matter jurisdiction to adjudicate Plaintiff's claims. (Defs. Mem. in Opp'n to Pl. Mot. for a Prelim. Inj. ("Defs. Mem.") 7, Docket Entry No. 22.) Specifically, Defendants argued that Plaintiff lacked (1) standing to bring a claim in its individual capacity for alleged violations of its clients' Sixth Amendment rights, (2) standing to bring an APA claim in its individual capacity, (3) third-party standing to bring Sixth Amendment and APA claims on behalf of its clients, and (4) standing to bring a claim regarding conditions at the MDC, as conceded by Plaintiff. (*Id*. at 7–13.)

Although Defendants argued that Plaintiff lacks standing to bring this action, the Court understood the proper question to be whether Plaintiff had a cause of action under the Sixth Amendment or the APA pursuant to *Lexmark*, where the Supreme Court addressed and clarified the issue of standing.[2] At oral argument, the Court heard extensive arguments from Plaintiff as to whether Plaintiff has a cause of action under the Sixth Amendment or the APA. (*See*

[2] In *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 127 (2014), the Supreme Court held that the term "statutory standing" is "misleading, since 'the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, *i.e.*, the court's statutory or constitutional *power* to adjudicate a case.'" 572 U.S. at 127 (citation omitted); *see American Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 359 (2d Cir. 2016) (finding that the question of whether a particular plaintiff has a cause of action "'does not belong' to the family of standing inquires" (quoting *Lexmark*, 572 U.S. at 127)).

generally Tr.) In concluding that Plaintiff did not have a cause of action, the Court began with the Sixth Amendment, which guarantees criminal defendants the right to effective assistance of counsel. *See* U.S. Const. amend. VI. The Court explained that the right to counsel is a right that is personal to the accused. *See Faretta v. California*, 422 U.S. 806, 837 (1975) (Burger, J., dissenting) ("As the Court seems to recognize . . . the conclusion that the rights guaranteed by the Sixth Amendment are 'personal' to an accused reflects nothing more than the obvious fact that it is he who is on trial and therefore has need of a defense."); *see also United States v. Medunjanin*, 752 F.3d 576, 587 (2d Cir. 2014) (finding, at least in the context of *Miranda v. Arizona*, 384 U.S. 436 (1966), that "the right to counsel is personal to the individual questioned; it is a right that must be affirmatively invoked by the suspect" (citation and internal quotation marks omitted)); *Coleman v. Hardy*, 690 F.3d 811, 818 (7th Cir. 2012) ("The law is clear . . . that an attorney cannot invoke his client's right to counsel under *Miranda*."). Thus, unlike in the context of claims pursuant to the Fair Housing Act and 42 U.S.C. § 1983, as discussed in *Havens Realty Corporation. v. Coleman*, 455 U.S. 363, 379 (1982) and *Centro de la Comunidad Hispana de Locus Valley v. Town of Oyster Bay*, 868 F.3d 104, 109 (2d Cir. 2017), upon which Plaintiff relies to argue that it has standing and which involved broad federal statutes that expressly authorized suit,[3] the Sixth Amendment right to counsel is personal to the accused and there is no indication that Congress has ever intended to authorize attorneys to bring suit under the right to counsel clause of the Sixth Amendment. Thus, because the right to counsel is

[3] In *Havens*, the plaintiff brought suit under the Fair Housing Act, which the Supreme Court held provided for standing to the "full limit" of Article III and under which courts lack the authority to impose prudential barriers. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982). In *Centro*, the organizational plaintiff brought suit under section 1983, challenging a town ordinance under the First and Fourteenth Amendments, which have broad language granting rights to the general public. *See Centro de la Comunidad Hispana de Locus Valley v. Town of Oyster Bay*, 868 F.3d 104, 108 (2d Cir. 2017).

personal to the accused, Plaintiff does not have a cause of action under the Sixth Amendment.

Similarly, the Court found that Plaintiff does not have a cause of action under the APA because Plaintiff was not within the "zone of interests" sought to be protected or regulated by the relevant statutes. (Tr. 45:5–25–46:1–2.) Section 702 of the APA provides: "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702. To bring a claim under the APA, "a plaintiff must satisfy Article III's standing requirements (constitutional standing) and assert interests that are arguably within the zone of interests to be protected or regulated by the statute she claims was violated (statutory standing), at all times during the litigation (mootness)." *Salazar v. King*, 822 F.3d 61, 73 (2d Cir. 2016). "Whether a plaintiff comes within the zone of interests is an issue that requires [a court] to determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." *Lexmark*, 572 U.S. at 127 (internal quotation marks omitted).

During the hearing, Plaintiff identified 18 U.S.C. § 4001 as the relevant statute. (Tr. 35:17–18.) Section 4001 of title 18 of the United States Code provides that the "control and management of Federal penal and correctional institutions . . . shall be vested in the Attorney General, who shall promulgate rules for the government thereof, and appoint all necessary officers and employees in accordance with the civil-service laws, the Classification Act, as amended, and the applicable regulations." 18 U.S.C. § 4001(b)(1). Although not identified by Plaintiff during the hearing, the Court also considered the applicability of 18 U.S.C. § 4042(a)(1)–(2). Under section 4042 of title 18 of the United States Code, the BOP shall, among other things, "have charge of the management and regulation of all Federal penal and

correctional institutions" and "provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with . . . offenses against the United States . . . ." 18 U.S.C. § 4042(a)(1)–(2). These statutory provisions relate primarily to the health, safety, and well-being of inmates and facility personnel. Although broadly worded, the statutes do not protect Plaintiff's interest in access to its clients, nor has Plaintiff pointed to legislative history that would suggest the zone of interests encompasses such an interest. In addition, to the extent Plaintiff's APA claim relies on the Sixth Amendment right to counsel, the APA claim fails for the same reasons the Sixth Amendment claim fails.

At the conclusion of oral argument and based generally on the reasoning summarized above, the Court denied Plaintiff's request for injunctive relief but granted Plaintiff the opportunity to amend the Complaint. Based on Plaintiff's March 29, 2019 submission to the Court, informing the Court that it will not amend the Complaint and inviting the Court to *sua sponte* dismiss the action, and on Defendants' response also urging *sua sponte* dismissal of the action, the Court dismisses the Complaint because Plaintiff does not have a cause of action under the Sixth Amendment or the APA.

The Clerk of Court is directed to close this case.

Dated: May 19, 2019
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge