

1 **II. BACKGROUND**

2 In the late 1970s and early 1980s, Morris was a letter carrier for the U.S. Postal
3 Service. An accident while on duty disabled him and he eventually began collecting
4 workers compensation under the Federal Employees Compensation Act (FECA).
5 Between 1989 and 1991, Morris was informally employed as a handyman at an apartment
6 complex, with a “salary” of \$200 per month. Morris had a duty to disclose such income
7 to the Labor Department office administering FECA payments, but he did not do so on
8 the forms he was periodically required to fill out regarding his financial status. The
9 Government somehow learned of his handyman income, and indicted Morris in March
10 1993 under 18 U.S.C. § 1001, the general federal false statement prohibition, on grounds
11 that Morris had sworn to having no income beyond his FECA benefits.

12 In October 1993, the Ninth Circuit handed down *United States v. Richardson*,
13 8 F.3d 15 (9th Cir. 1993), a case about a person, like Morris, charged with violating
14 18 U.S.C. § 1001 for failure to disclose other income while receiving FECA benefits.
15 The Ninth Circuit held that such a person must be prosecuted under 18 U.S.C. § 1920, a
16 statute specific FECA-related false statements, rather than 18 U.S.C. § 1001.
17 *Richardson*, 8 F.3d at 17.

18 In light of *Richardson*, the Government voluntarily dismissed the indictment
19 without prejudice in January 1994. Later that year, Congress amended a federal
20 administrative statute, 5 U.S.C. § 8148, to specify that persons convicted under 18 U.S.C.
21 § 1920 forfeit their entitlement to FECA benefits. In January 1995, the Government re-
22 indicted Morris, this time under 18 U.S.C. § 1920. In February 1995, Morris pled guilty
23 to the charge and was sentenced to one year of unsupervised probation and a \$250 fine.

24 Sometime later in 1995, the Labor Department revoked Morris’s FECA income as
25 required by 5 U.S.C. § 8148. Documents attached to Morris’s complaint suggest that
26 Morris unsuccessfully appealed this decision through Labor Department administrative
27 channels. Those appeals apparently concluded no later than 2001. Sometime in 2010
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1 (according to Morris's complaint) or perhaps in July 2008 (according to documents
2 attached to Morris's complaint), the Labor Department discontinued Morris's health
3 insurance benefits, apparently as part of Morris's forfeiture of FECA benefits under
4 5 U.S.C. § 8148. It is not clear why the Labor Department took so long to terminate
5 health insurance benefits.

6 **III. ANALYSIS**

7 **A. Claims in the Nature of a § 2255 Petition**

8 The first legal claim the Court can discern from Morris's complaint is an attack on
9 the validity of his conviction. Such an attack is in the nature of a habeas petition under
10 28 U.S.C. § 2255, and the Court will therefore treat it as a § 2255 petition. Under § 2255,
11 Morris's claim is time-barred:

12 A 1-year period of limitation shall apply to a motion under
13 this section. The limitation period shall run from the latest
14 of— (1) the date on which the judgment of conviction
15 becomes final . . . [or] (4) the date on which the facts
16 supporting the claim or claims presented could have been
17 discovered through the exercise of due diligence.

18 28 U.S.C. § 2255(f)(1), (4). Morris's judgment of conviction became final in 1995, and
19 obviously more than one year has passed since then, so his challenge would be time-
20 barred under that standard. To the extent that Morris's claims about not discovering
21 relevant information until September 2008 are relevant, Morris is still time-barred
22 because he did not file until November 2010, which is more than one year after
23 September 2008. Thus, under either calculation, the limitation period has expired, and
24 Morris can no longer challenge the validity of his conviction.

25 Even if Morris's challenge was not time-barred, the Court would still dismiss it
26 because Morris's complaint does not explain why his conviction is invalid. Morris
27 repeatedly states that his conviction is void because it fails to comply with the Ninth
28 Circuit's *Richardson* decision. But if anything, *Richardson* proves the opposite. In
Richardson, the Ninth Circuit held that a person accused of making false statements to

1 obtain FECA disability benefits must be prosecuted under 18 U.S.C. § 1920, a statute
2 specific FECA-related false statements, rather than 18 U.S.C. § 1001, the general federal
3 false statements statute. *Richardson*, 8 F.3d at 17. Morris was convicted of making a
4 FECA-related false statement under 18 U.S.C. § 1920, just as *Richardson* requires.
5 Accordingly, no basis exists to avoid Morris’s conviction.

6 **B. Ex Post Facto Challenge**

7 Morris claims that the Labor Department’s decision to revoke his FECA benefits
8 violates the *ex post facto* clause of the Constitution because the statute directing the
9 Labor Department to revoke benefits, 5 U.S.C. § 1848, was not enacted until after Morris
10 committed the conduct that led to his conviction. A Fifth Circuit case, *Garner v. U.S.*
11 *Dep’t of Labor*, 221 F.3d 822 (5th Cir. 2000), is both instructive and persuasive on two
12 important issues involved in Morris’s argument: first, whether Morris must complain to
13 the Labor Department about the alleged *ex post facto* violation before filing suit; and
14 second, whether any *ex post facto* violation occurred. Regarding the first question, the
15 Fifth Circuit notes that the Labor Department’s decision to revoke benefits is something
16 that the aggrieved party (such as Morris) must usually challenge through the Labor
17 Department’s internal procedures. *Id.* at 825. Morris’s complaint, and the documents he
18 attaches, suggests that Morris did appeal through Labor’s internal procedures. However,
19 if he did not, an exception exists for constitutional challenges such as this one, which the
20 Labor Department itself cannot decide. *Id.* Therefore, Morris need not have exhausted
21 this argument through the Labor Department before bringing this suit.

22 Nonetheless, Morris needed to file his *ex post facto* challenge to “within six years
23 after the right of action first accrue[d].” 28 U.S.C. § 2401(a). Documents attached to the
24 complaint show that the Labor Department cut off Morris’s income benefits in 1995.
25 Accordingly, Morris has filed his challenge too late, at least with respect to the income
26 benefits.

27 Morris’s health insurance benefits, on the other hand, were terminated sometime
28 in 2008 or 2010. Assuming for argument’s sake that this termination was a separate

1 agency decision (rather than an extension of the 1995 decision to terminate income
2 benefits), Morris timely filed suit with respect to his health insurance, but the Court
3 nonetheless agrees with the Fifth Circuit’s reasoning in *Garner* that no *ex post facto*
4 violation occurred.

5 There is no question that the statute which stripped Morris of his FECA benefits,
6 5 U.S.C. § 8148, did not exist in that form until 1994 — after Morris had failed to report
7 income to FECA. Accordingly, the Labor Department’s application of 5 U.S.C. § 8148
8 to Morris is certainly an application of that statute to previous conduct. However, such
9 application does not violate the *ex post facto* clause unless 5 U.S.C. § 8148 imposes
10 “punishment.” *Garner*, 221 F.3d at 826. Applying the Supreme Court’s three-part test
11 for determining whether a statute imposes “punishment,” the Fifth Circuit in *Garner*
12 concluded that 5 U.S.C. § 8148 primarily addresses “the remedial goal of saving the
13 federal government, and therefore the taxpayers, from expending large sums of FECA
14 funds, funds which are limited in amount, on those who have been convicted of
15 defrauding the program. This obviously is protective of the integrity of the program.” *Id.*
16 In addition, “the Supreme Court has made abundantly clear[that] the denial of a
17 noncontractual governmental benefit does not fall within the historical meaning of
18 legislative punishment.” *Id.* Thus, 5 U.S.C. § 8148 does not impose “punishment,” as
19 that word is used in connection with the *ex post facto* clause. *Id.* at 827–28; *accord*
20 *Slugocki v. Department of Labor*, 988 F. Supp. 1443 (S.D. Fla. 1997). Accordingly,
21 Morris’s *ex post facto* challenge fails.

22 C. Leave to Amend

23 Leave to amend should be freely granted “when justice so requires.” Fed. R. Civ.
24 P. 15(a)(2). However, “leave may be denied if amendment of the complaint would be
25 futile.” *Gordon v. City of Oakland*, 627 F.3d 1092, 1094 (9th Cir. 2010). Because
26 Morris’s claims fail as a matter of law, leave to amend would be futile in this case.

27 IT IS THEREFORE ORDERED that “Defendant United States’ Motion to
28 Dismiss” (Doc. 24) is GRANTED.

1 IT IS FURTHER ORDERED that the Clerk enter judgment in favor of all
2 Defendants and that Plaintiff take nothing. The Clerk shall terminate this action.

3 Dated this 10th day of May, 2011.

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7 Neil V. Wake
8 United States District Judge
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