

1 While Plaintiff's complaint is a brief half-page argument citing no particular
2 statute or legal basis, Defendant rightly construes the claim as a petition for
3 judicial review of agency action under Title II of the Social Security Act (the
4 "Act"), 42 U.S.C. § 405(g).

5 According to Defendant's motion, the procedural history of this case
6 began when Plaintiff filed for, and was granted, Social Security retirement
7 benefits on January 24, 2012. However, shortly thereafter in February 2012,
8 the SSA suspended payment of Plaintiff's benefits because its agents
9 determined that Plaintiff was not a United States citizen and did not have legal
10 immigration status. Plaintiff proceeded to file this action on March 28, 2014,
11 but to this day has not sought a remedy within the SSA. Defendant thereafter
12 determined that Plaintiff lacked valid immigration status by accessing DHS's
13 Systematic Alien Verification for Entitlements (SAVE) Program and also
14 obtained direct DHS confirmation that Plaintiff's legal status expired in 2007.

15 16 **II. DISCUSSION**

17 Defendant argues that this action should be dismissed because Plaintiff
18 has failed to exhaust his administrative remedies. The Court agrees.

19 Judicial review under the Act is available only after the aggrieved party
20 exhausts administrative remedies. Section 405(g) imposes, inter alia, a
21 waivable requirement that the applicant exhaust the administrative remedies
22 prescribed by the SSA, and bars judicial review of any denial of benefits until
23 after a "final decision" by the Secretary after a "hearing." Mathews v. Eldridge,
24 424 U.S. 319, 328 (1976). Exhaustion is required as a matter of preventing
25 premature interference with agency processes, so that the agency may function

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1 efficiently and have an opportunity to correct its own errors, to afford the parties
2 and the courts the benefit of its experience and expertise, and to compile a
3 record adequate for judicial review. Weinberger v. Salfi, 422 U.S. 749, 764
4 (1975). However, exhaustion need not be satisfied if further administrative
5 review is deemed futile. Id. at 765.

6 The limited record here shows that Plaintiff has not exhausted his
7 administrative remedies because he has not sought reconsideration of the
8 agency's initial February 2012 determination denying his retirement benefits.
9 Plaintiff has not exhausted his administrative remedies because he did not take
10 any one of the four-steps outlined in the Act's process for exhaustion. See 20
11 C.F.R. §§ 416.1400(a)(1)-(5) (setting out the process for exhaustion as follows:
12 (1) initial determination; (2) reconsideration; (3) hearing before an
13 administrative law judge (ALJ); (4) Appeals Council review; and (5) federal
14 court review). Defendant argues that requiring Plaintiff to exhaust his
15 administrative remedies would not be futile because, despite Plaintiff's
16 argument that CBP told him that it would not issue him a new I-94, DHS
17 confirmed that Plaintiff needs to obtain the new I-94 to cure the defect in his
18 immigration status. The Court agrees that since the SSA's initial denial of
19 benefits is based on the Plaintiff's current illegal status, filing for
20 reconsideration is not necessarily futile. He may raise the same issues raised
21 here on reconsideration, and if unsuccessful, before the ALJ and then the
22 Appeals Council. This conclusion and the resulting order are based on the
23 assumption that Plaintiff is not otherwise barred from seeking agency
24 reconsideration. See e.g., 20 C.F.R. § 416.1405 (stating that an initial agency
25 determination is binding unless the applicant requests reconsideration within
26 the stated time period, or the SSA otherwise revises its initial determination).

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1 Factual allegations asserted by the *pro se* petitioners, “however inartfully
2 pleaded,” are held “to less stringent standards than formal pleadings drafted by
3 lawyers.” Haines v. Kerner, 404 U.S. 519-20 (1972). Therefore, the Court
4 construes Plaintiff’s reply that CBP denied him a new I-94 as raising the “futility”
5 argument. Nevertheless, Plaintiff’s argument is insufficient to overcome the
6 § 405(g) exhaustion requirement because Plaintiff can simply raise the same
7 argument within SSA proceedings.

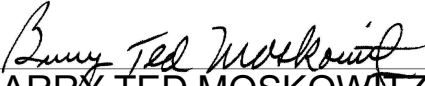
8 Consequently, the Court finds that Plaintiff has failed to exhaust his
9 administrative remedies, the Court lacks jurisdiction over the action, and the
10 matter should be dismissed without prejudice pursuant to Kelly v. Fleetwood
11 Enters., Inc., 377 F.3d 1034, 1036 (9th Cir. 2004) (explaining that where the
12 Court lacks subject matter jurisdiction, the claims should be dismissed without
13 prejudice).

14
15 **III. CONCLUSION**

16 For the reasons discussed above, Defendant’s motion to dismiss the
17 Complaint is **GRANTED**. This action is **DISMISSED** without prejudice.

18 **IT IS SO ORDERED.**

19 DATED: December 5, 2014

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21 
22 BARRY TED MOSKOWITZ, Chief Judge
23 United States District Court
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