

## **CORRECTED APPLICATION FOR EXTENSION OF TIME**

**No. –**

**In the Supreme Court of the United States**

**FREDERICK W. RICHARDSON,**  
Petitioner,

v.

**UNITED STATES DEPARTMENT OF LABOR, et al.,**  
Respondents.

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### **APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI**

Petitioner respectfully requests a 60-day extension of time, to and including **April 12, 2026**, to file a petition for a writ of certiorari in this matter.

#### **1. Lower Court Decisions**

- The Ninth Circuit issued its memorandum disposition on **May 23, 2025**.
- The United States District Court for the Western District of Washington issued its order on **September 29, 2023**.
- Copies of both decisions are included in **Exhibit A** and **Exhibit B** of the Appendix.

#### **2. Grounds for Extension**

Petitioner is proceeding pro se and has been the sole caregiver for his elderly mother following a sudden and severe medical crisis requiring hospitalization, surgery, and ongoing recovery. Petitioner traveled from Washington State to Louisiana to provide full-time care, manage medical decisions, and coordinate treatment. These circumstances have significantly limited his ability to prepare the petition.

Additionally, Petitioner received a procedural correction notice from the Clerk's Office requiring the inclusion of the lower-court opinions. Petitioner has now obtained and assembled the required documents.

#### **3. Good Cause**

Good cause exists for the requested extension due to:

- Petitioner's ongoing caregiving responsibilities
- Medical emergencies requiring travel and continuous attention


- Limited access to stable internet and workspace
- The need to prepare a careful and complete petition
- The Clerk's request for correction and resubmission

Petitioner has acted diligently and respectfully seeks additional time to complete the petition.

### **Conclusion**

For the foregoing reasons, Petitioner respectfully requests that the time to file a petition for a writ of certiorari be extended to **April 12, 2026**

Respectfully submitted,

 February 11, 2026

Frederick W. Richardson

Pro Se Petitioner

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## **APPENDIX COVER SHEET**

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### **Exhibit A**

#### **Ninth Circuit Memorandum**

*(May 23, 2025) 3 pages (A1-A3)*

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### **Exhibit B**

#### **District Court Order**

*(September 29, 2023) 11 pages (A4-A14)*

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**Exhibit A — Ninth Circuit Memorandum**

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 23 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FREDERICK W. RICHARDSON,

Plaintiff - Appellant,

v.

UNITED STATES DEPARTMENT OF  
LABOR, Office of Workers Compensation  
Programs (OWCP); SANDRA E. TYUS,  
Claims Examiner; TRACY A. JOHNSON,  
OWCP Chief of Operations; CRAIG  
DUNN; JANE DOE; JOHN DOE; JONAS  
MALM,

Defendants - Appellees.

No. 23-3130

D.C. No. 2:20-cv-00923-LK

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Lauren J. King, District Judge, Presiding

Submitted May 21, 2025\*\*

Before: SILVERMAN, LEE, and VANDYKE, Circuit Judges.

Frederick W. Richardson appeals pro se from the district court's judgment

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

dismissing his action alleging that delays by the Office of Workers' Compensation Programs ("OWCP") deprived him of his right to procedural due process. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Crowe v. Or. State Bar*, 989 F.3d 714, 724 (9th Cir. 2021) (sovereign immunity); *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010) (failure to state a claim under Fed. R. Civ. P. 12(b)(6)); *Council of Ins. Agents & Brokers v. Molasky-Aramn*, 522 F.3d 925, 930 (9th Cir. 2008) (standing). We affirm.

The district court properly determined that Richardson lacked standing for his claims for injunctive relief because Richardson failed to allege facts sufficient to show a likelihood of future injury. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983) (explaining that a plaintiff's standing to seek injunctive relief depends on whether he is likely to suffer future injury from the actions complained of).

The district court properly dismissed Richardson's claim for damages against OWCP because those claims are barred by sovereign immunity. *See Balser v. Dep't of Just., Off. of the U.S. Tr.*, 327 F.3d 903, 907 (9th Cir. 2003) (explaining that the "United States . . . is immune from suit unless it has waived its immunity").



To the extent Richardson sought to bring claims under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) against OWCP employees in their individual capacities, the district court properly dismissed these claims because a *Bivens* remedy is not available. *See Egbert v. Boule*, 596 U.S. 482, 491-93 (2022) (explaining that recognizing a cause of action under *Bivens* is a “disfavored judicial activity” and that the presence of “an alternative remedial structure” precludes recognizing a *Bivens* cause of action in a new context (citations omitted)).

We do not consider allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**

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**Exhibit B — District Court Order**



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FREDERICK W. RICHARDSON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
LABOR et al.,

Defendants.

CASE NO. 2:20-cv-0923-LK

ORDER GRANTING MOTION TO  
DISMISS SECOND AMENDED  
COMPLAINT

This matter comes before the Court on Defendants' motion to dismiss Mr. Richardson's second amended complaint. Dkt. No. 60. For the reasons set forth below, the Court grants the motion.

**I. BACKGROUND**

Mr. Richardson, a former custodian with the United States Postal Service, injured his knee on the job in 1991. Dkt. No. 61 at 1. He filed a claim with the Office of Workers' Compensation Programs ("OWCP") for benefits under the Federal Employees Compensation Act ("FECA"), 5

1 U.S.C. § 8101, *et seq.* Dkt. No. 61 at 1.<sup>1</sup> OWCP granted his claim, and Mr. Richardson “has been  
2 receiving temporary total disability payments on the periodic rolls since February 1, 2010. OWCP  
3 has also been paying medical expenses for all accepted medical conditions since the date of injury.”  
4 Dkt. No. 61 at 2. Over the years, Mr. Richardson has sought to expand his claim to add other  
5 conditions and related medical expenses. Dkt. No. 45 at 2–3.

6 Unsatisfied by OWCP’s delay in adjudicating his requests, Mr. Richardson filed this action  
7 in 2020 alleging that OWCP and its employees “negligently handled his FECA claim for benefits  
8 in a way that violated his due process rights and caused physical and mental injuries.” Dkt. No. 17  
9 at 1. Defendants moved to dismiss the complaint. Dkt. No. 8. Noting that FECA prohibits judicial  
10 review of OWCP benefits adjudications unless a complaint alleges a constitutional violation that  
11 is not “insubstantial,” the Court found that it lacked subject matter jurisdiction because Mr.  
12 Richardson’s “due process challenges to OWCP’s conduct are insubstantial as presently alleged.”  
13 Dkt. No. 17 at 6–7. The Court granted leave to amend, and Mr. Richardson filed an amended  
14 complaint. *Id.*; *see* Dkt. No. 23.

15 Defendants filed a motion to dismiss the amended complaint. Dkt. No. 36. United States  
16 Magistrate Judge J. Richard Creatura issued a Report and Recommendation (“R&R”)   
17 recommending that the Court deny the motion to dismiss because Mr. Richardson alleges a years-  
18 long delay in the processing of his benefits claim, and “an unreasonably and egregiously lengthy  
19 administrative process” can state a “substantial violation of procedural due process[.]” Dkt. No.  
20 45 at 9.

21  
22  
23 <sup>1</sup> FECA provides that “[t]he United States shall pay compensation . . . for the disability or death of an employee  
24 resulting from personal injury sustained while in the performance of his duty[.]” 5 U.S.C. § 8102(a). OWCP is  
responsible for administering FECA. *See* 20 C.F.R. § 10.1.



1 The Court adopted the background facts and procedural history in the R&R. Dkt. No. 48  
2 at 2. However, the Court found that Mr. Richardson's amended complaint did not identify what  
3 relief he seeks in this action despite Rule 8(a)'s requirement to include "a demand for the relief  
4 sought[.]" *Id.* at 2 (internal quotation marks omitted). The Court explained that "[t]he absence of  
5 a demand for relief is more than just a pleading deficiency" because "[w]ithout knowing what  
6 remedy Mr. Richardson seeks, the Court cannot evaluate whether it has jurisdiction to grant it or  
7 whether—as Defendants contend, Dkt. No. 46 at 1, 4—he has received all of the relief he seeks or  
8 could obtain in this lawsuit." *Id.* The Court also noted that the amended complaint named several  
9 individuals as Defendants, but failed to "specify the nature or basis of th[e] claims" against those  
10 Defendants. *Id.* Therefore, the Court could not determine whether the claims against the  
11 individuals were cognizable. *Id.*

12 Mr. Richardson filed a second amended complaint—the current operative complaint—  
13 naming as Defendants the OWCP, several of its employees, and two "Doe" defendants. Dkt. No.  
14 49 at 1–4. Mr. Richardson notes that in January 2016, he submitted a letter to OWCP requesting  
15 to add post-operative atrial fibrillation ("Afib") and "associated heart issue(s)" to his claim for  
16 benefits. *Id.* at 7. In 2018, he requested that his "left shoulder associated conditions [be] added to  
17 he claim." *Id.* at 18. In 2019, he sought an atrial fibrillation ablation procedure and "Watchman  
18 device" related to his cardiac condition, but "OWCP did not make a decision on [his] 1/15/2016  
19 response/request letter until March 21, 2022[,] over 7 years later." *Id.* OWCP does not dispute  
20 those facts. It states that Mr. Richardson's January 2016 letter was misfiled in its system due to a  
21 clerical error; the letter requested to add Afib to his claim; he requested that OWCP update his  
22 claim to include a "left shoulder and neck injury"; he sought authorization for an atrial fibrillation  
23 ablation procedure and a Watchman device related to his post-op Afib claim in July 2019; and on  
24 March 21, 2022, "OWCP issued a decision denying Plaintiff's claim for post-op Afib, and related

1 requests for [an] atrial fibrillation ablation procedure and a Watchmen device." Dkt. No. 61 at 3–  
2 5, 8.

3 Mr. Richardson's second amended complaint avers that "OWCP violated [his] due process,  
4 and Constitutional Rights repeatedly for approximately 7 years, ignoring many requests related to  
5 [his] claim" and denied him "proper and timely treatment/duty of care that aggravated and caused  
6 physical and mental injuries." Dkt. No. 49 at 5. As relief, Mr. Richardson seeks \$855,000; an  
7 "[i]nvestigation into how the [FECA] law and its provisions for injured workers were deviated  
8 from for years by those entrusted to administer it"; "Recertification/Training for the responsible  
9 parties"; and "such other relief as the Court deems proper." *Id.* at 6. Defendants moved to dismiss  
10 all claims. Dkt. No. 60.

## 11 II. DISCUSSION

12 Defendants seek dismissal of all claims in Mr. Richardson's second amended complaint  
13 for the following reasons:

14 (1) [T]his Court lacks jurisdiction to hear a challenge to the OWCP's denial of  
15 Plaintiff's claims; (2) the OWCP has responded to and adjudicated all of Plaintiff's  
16 claims; (3) Plaintiff has been given all the due process he is entitled to and any due  
17 process claim is moot; (4) even if Plaintiff could state a live due process claim, the  
18 Court cannot grant him the relief he requests; and (5) Plaintiff has failed to identify  
19 a cognizable legal claim against the individual defendants and he cannot bring a  
20 *Bivens* claim against federal government employees for alleged violations of  
21 constitutional rights in adjudicating a claim for FECA benefits.

22 Dkt. No. 60 at 2. As explained below, the Court agrees that it lacks jurisdiction to hear a challenge  
23 to OWCP's benefits decision. Although the Court does have jurisdiction over constitutional claims  
24 that are not "insubstantial" and "appear to be more than mere allegations included in the complaint  
to create jurisdiction where none would exist otherwise," *Rodriguez v. Donovan*, 769 F.2d 1344,  
1348 (9th Cir. 1985), even assuming that Mr. Richardson has stated such a claim, his claim is  
moot, and the Court cannot afford him the relief he seeks. Finally, to the extent Mr. Richardson



1 intends to bring a claim against the individual Defendants in their personal capacities, he has not  
2 stated a claim against them.

3 **A. The Court Lacks Jurisdiction to Review the Decision Denying Benefits**

4 Defendants raise a factual challenge to jurisdiction and argue that the Court lacks  
5 jurisdiction to hear a challenge to OWCP's denial of Mr. Richardson's requests to expand his  
6 claim. Dkt. No. 60 at 3–4. In reviewing a factual challenge, the court may consider materials  
7 beyond the complaint, *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir.  
8 2003), “weigh the evidence[,] and satisfy itself as to the existence of its power to hear the case,”  
9 *Mortensen v. First Fed. Sav. & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977). The Court may look  
10 to “extra-pleading material” to decide whether it has jurisdiction “even if it becomes necessary to  
11 resolve factual disputes.” *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989). The Court  
12 has considered the Declaration of Jennifer Valdivieso, Dkt. No. 61, for background purposes, but  
13 there are no factual disputes to resolve because, as set forth above, the parties agree on the relevant  
14 facts.

15 Mr. Richardson alleges that OWCP denied him “proper and timely treatment/duty of care  
16 that aggravated and caused physical and mental injuries,” and that “[b]oth of [his] shoulders are  
17 still in need of surgery due to associated injuries of [his] right knee accepted condition.” Dkt. No.  
18 49 at 5 (emphasis omitted). But as the Court has already held, “FECA prohibits judicial review of  
19 OWCP benefit determinations.” Dkt. No. 17 at 5; *see* 5 U.S.C. § 8128(b) (“The action of the  
20 Secretary or his designee in allowing or denying a payment . . . is . . . final and conclusive for all  
21 purposes with respect to all questions of law and fact; and . . . [is] not subject to review by . . . a  
22 court by mandamus or otherwise.”). Mr. Richardson concedes this point and notes that “he cites  
23 the ultimate decision on his requests [for benefits] only as background information.” Dkt. No. 64  
24 at 25. To the extent that Mr. Richardson asserts a claim premised on the denial of his request to

1 expand his benefits, the Court lacks jurisdiction to hear it. *See, e.g., Markham v. United States*,  
 2 434 F.3d 1185, 1187 (9th Cir. 2006) ("Section 8128(b) explicitly provides that the courts do not  
 3 have jurisdiction to review FECA claims challenging the merits of benefit determinations[.]");  
 4 *Czerkies v. U.S. Dep't of Labor*, 73 F.3d 1435, 1441 (7th Cir. 1996) ("When all that a claimant is  
 5 seeking is benefits on the basis of an error of fact or law by the administering agency, judicial  
 6 review is barred altogether."). Therefore, the Court has no jurisdiction to review OWCP's decision  
 7 or to grant additional benefits.<sup>2</sup>

8 **B. This Case Is Now Moot**

9 Despite the statutory prohibition on reviewing the validity of coverage determinations,  
 10 courts have jurisdiction to consider substantial due process challenges arising out of the processing  
 11 of FECA claims. *Rodrigues*, 769 F.2d at 1348. Mr. Richardson contends that Defendants denied  
 12 him due process by ignoring his requests to update his FECA claim "for over 7 years[.]" Dkt. No.  
 13 49 at 5. The parties contest whether that protracted delay rises to the level of a due process  
 14 deprivation. Defendants argue that despite the delay, Mr. Richardson has received all the process  
 15 he was due because OWCP adjudicated his claim and issued a decision with appeal rights. Dkt.  
 16 No. 60 at 11–15. Mr. Richardson responds that "even if a claim is ultimately denied, procedural  
 17 due process requires that the agency not unreasonably delay its determination." Dkt. No. 64 at 22.

18 The Court need not decide whether Mr. Richardson has stated a substantial claim for  
 19 violation of his due process rights because even if he has, his claim is now moot. Article III of the  
 20 Constitution restricts federal courts to deciding only "actual, ongoing controversies." *Honig v.*

21  
 22  
 23 <sup>2</sup> Mr. Richardson also complains about Defendants' allegedly "negligent" claims processing that violated the "duty of  
 24 care," Dkt. No. 49 at 7, 13, but the Court previously dismissed his claim under the Federal Tort Claims Act, Dkt. No.  
 17 at 1, 7. His second amended complaint asserts only a due process claim, Dkt. No. 49 at 5, so the allegations of  
 "negligence" therein appear to be made in support of the due process claim rather than an attempt to resurrect the  
 negligence claim.



1 *Doe*, 484 U.S. 305, 317 (1988); *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992)  
2 (explaining that if a claim becomes moot, the Court lacks jurisdiction because there is no longer a  
3 live case or controversy as required by Article III of the U.S. Constitution). “Even where litigation  
4 poses a live controversy when filed . . . a federal court [must] refrain from deciding it ‘if events  
5 have so transpired that the decision will neither presently affect the parties’ rights nor have a more-  
6 than-speculative chance of affecting them in the future.’” *Clarke v. United States*, 915 F.2d 699,  
7 701 (D.C. Cir. 1990) (quoting *Transwestern Pipeline Co. v. F.E.R.C.*, 897 F.2d 570, 575 (D.C.  
8 Cir. 1990)). In other words, “[t]he requisite personal interest that must exist at the commencement  
9 of litigation (standing) must continue throughout its existence[.]” *Hernandez v. Cnty. of Monterey*,  
10 70 F. Supp. 3d 963, 970–71 (N.D. Cal. 2014) (quoting *U.S. Parole Comm’n v. Geraghty*, 445 U.S.  
11 388, 397 (1980)); *Vasquez v. Los Angeles Cnty.*, 487 F.3d 1246, 1253 (9th Cir. 2007) (“[A] live  
12 controversy must exist at all stages of the litigation, not simply at the time plaintiff filed the  
13 complaint.”). As the party invoking the Court’s subject matter jurisdiction, the plaintiff bears the  
14 burden of establishing that the Court has the power to grant the relief requested. *See Kokkonen v.*  
15 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

16 Here, the action has become moot—and the Court consequently lacks jurisdiction—  
17 because even if the Court were to rule in Mr. Richardson’s favor, “there is no further relief the  
18 Court can provide.” *Gill v. Mayorkas*, C20-939-MJP, 2022 WL 425343, at \*2 (W.D. Wash. Feb.  
19 11, 2022); *see also Rodrigues*, 769 F.2d at 1349 (stating that “[i]f reinstatement of benefits pending  
20 a hearing is the only relief that Rodrigues seeks and a hearing has been held, it may be that this  
21 case is now moot.”); *Magassa v. Mayorkas*, 52 F.4th 1156, 1167 (9th Cir. 2022) (noting that the  
22 doctrine of standing requires plaintiffs to show that their injury “is likely to be redressed by a  
23 favorable decision” (internal quotation marks omitted)). Although OWCP has not provided all the  
24 benefits Mr. Richardson seeks, the Court cannot provide the relief he requests. Mr. Richardson

1 seeks \$855,000, Dkt. No. 49 at 6, but the United States has not waived its sovereign immunity for  
2 a claim for monetary damages for procedural due process violations. *Czerkies*, 73 F.3d at 1438  
3 (“If [the plaintiff] is seeking damages or other monetary relief he is barred by sovereign  
4 immunity[.]”). And “[a] violation of procedural rights requires only a procedural correction, not  
5 the reinstatement of a substantive right to which the claimant may not be entitled on the merits.”  
6 *Raditch v. United States*, 929 F.2d 478, 481 (9th Cir. 1991); *Miranda v. City of Casa Grande*, 15  
7 F.4th 1219, 1227 (9th Cir. 2021) (same); see also *Czerkies*, 73 F.3d at 1442 (explaining that “a  
8 conclusion that the claimant had been denied due process of law [would not] entitle him to benefits.  
9 It would entitle him only to a fair procedure for adjudicating his claim to benefits.”).<sup>3</sup> The Court  
10 in *Czerkies* explained that a “decision as to whether the statute administered by the agency in  
11 question entitled [the plaintiff] to benefits would remain that of the agency—and not subject to  
12 judicial review.” 73 F.3d at 1442. Following those principles, even if Mr. Richardson could  
13 establish a due process violation, the Court could only grant him a procedural remedy, not  
14 additional benefits or damages. But OWCP has already adjudicated Mr. Richardson’s claim, and  
15 he is not seeking a procedural remedy. Dkt. No. 49 at 6 (listing relief requested).

16 Mr. Richardson also seeks injunctive relief, but he is not entitled to that either. Specifically,  
17 Mr. Richardson seeks an investigation into how FECA’s provisions “were deviated from” in his  
18 case and recertification and training “for the responsible parties.” *Id.* The plaintiff “bears the  
19 burden of showing that he has standing for each type of relief sought,” including an injunction.  
20 *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). When plaintiffs seek injunctive relief,  
21 they must allege some likelihood of future injury. See *City of Los Angeles v. Lyons*, 461 U.S. 95,

22  
23 <sup>3</sup> Although nominal damages are available to redress some due process violations, *Carey v. Phipps*, 435 U.S. 247, 266  
24 (1978), the United States has not waived its sovereign immunity for claims for monetary damages—including nominal  
damages—arising from alleged due process violations. See, e.g., *Magassa v. Wolf*, 487 F. Supp. 3d 994, 1007–08  
(W.D. Wash. 2020).



1 105–06 (1983). But Mr. Richardson has not alleged any likelihood of future injury. His second  
2 amended complaint does not state that he is filing additional FECA claims, that if he did so he  
3 would again encounter protracted delays, or allege any other basis to suggest a likelihood of future  
4 injury. Mr. Richardson has thus failed to show an entitlement to injunctive relief. *See, e.g.,*  
5 *Guerrero-Smith v. Solis*, 10 F. Supp. 3d 154, 156–57 (D.D.C. 2014) (denying the plaintiff’s request  
6 to compel OWCP to “[p]rocess any future payment paperwork in a timely fashion” because she  
7 failed to present any evidence that the agency “may not respond to hypothetical future workers’  
8 compensation claims in a timely manner.” (internal quotation marks omitted)). Because the Court  
9 cannot award further relief and there is no live controversy, this case is moot.

10 Mr. Richardson does not argue that any of the exceptions to the mootness doctrine apply,  
11 nor does it appear that any exceptions apply here. Although “a defendant’s voluntary cessation of  
12 a challenged practice does not deprive a federal court of its power to determine the legality of the  
13 practice,” *Ctr. For Biological Diversity v. Lohn*, 511 F.3d 960, 965 (9th Cir. 2007) (internal  
14 quotation marks omitted) (quoting *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289  
15 (1982)), a case is still moot “if subsequent events ma[k]e it absolutely clear that the allegedly  
16 wrongful behavior could not reasonably be expected to recur,” *Native Vill. of Nuiqsut v. Bureau*  
17 *of Land Mgmt.*, 9 F.4th 1201, 1215 (9th Cir. 2021) (cleaned up). Here, OWCP has issued a decision  
18 and Mr. Richardson does not allege that he has filed additional claims, and there is no indication  
19 that the allegedly wrongful behavior will recur. For the same reasons, the mootness exception for  
20 “wrongs capable of repetition yet evading review” is inapplicable. *Ctr. for Biological Diversity*,  
21 511 F.3d at 965 (holding that “there must be a reasonable expectation that the same complaining  
22 party will be subject to the same injury again” (cleaned up)). A third exception exists where a  
23 plaintiff “would suffer collateral legal consequences if the actions being appealed were allowed to  
24 stand,” *Pub. Utils. Comm’n v. F.E.R.C.*, 100 F.3d 1451, 1460 (9th Cir. 2007), but as set forth

1 above, the Court is unable to alter OWCP's benefits decision even if it were to find a due process  
2 violation.

3 Therefore, the case must be dismissed as moot.

4 **C. Mr. Richardson Has Not Stated a Claim Against the Individual Defendants**

5 Defendants move to dismiss the claims against the individual Defendants because Mr.  
6 Richardson has failed to state a claim against them. Dkt. No. 60 at 16. Dismissal under Rule  
7 12(b)(6) may be based on either the lack of a cognizable legal theory or the absence of sufficient  
8 facts alleged under a cognizable legal theory. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622  
9 F.3d 1035, 1041 (9th Cir. 2010). The Court accepts as true all factual allegations in the complaint  
10 and construes them in the light most favorable to the nonmoving party. *Skilstaf, Inc. v. CVS*  
11 *Caremark Corp.*, 669 F.3d 1005, 1014 (9th Cir. 2012).

12 The Court's prior Order noted that Mr. Richardson's amended complaint did not specify  
13 the nature or basis of any claims against the individual Defendants. Dkt. No. 48 at 2. Mr.  
14 Richardson's second amended complaint does not cure that deficiency. *See generally* Dkt. No. 49.

15 The second amended complaint does not specify whether Mr. Richardson is suing the  
16 individual Defendants in their personal or official capacities, but either way, he fails to state a  
17 claim. If Mr. Richardson is suing the individual Defendants in their official capacities, that claim  
18 duplicates the claim against OWCP and fails for the same reasons. This is because the Court treats  
19 official capacity claims as claims against the entity that employs the official—here, OWCP. *See*  
20 *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (explaining that “an official-capacity suit is, in all  
21 respects other than name, to be treated as a suit against the entity,” and “the real party in interest  
22 is the entity”); *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978) (“[O]fficial-capacity  
23 suits generally represent only another way of pleading an action against an entity of which an  
24 officer is an agent[.]”). And an individual capacity claim is untenable because the Ninth Circuit



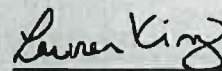
has declined to recognize a *Bivens* claim against federal government employees for alleged violations of constitutional rights in adjudicating a claim for FECA benefits. *Ponce v. U.S. Gov't*, 667 F. App'x 921, 923 (9th Cir. 2016).

Finally, Mr. Richardson has not requested, and the Court will not grant, further leave to amend the complaint. District courts may dismiss a complaint without leave to amend if "the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)); *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 725-26 (9th Cir. 2000) (explaining that a district court may deny leave to amend when amendment would be futile). Here, the allegations of additional facts will not save Mr. Richardson's claims. In addition, Mr. Richardson has been granted leave to amend twice before, Dkt. Nos. 17, 48, but the amendments have not remedied his claims' shortcomings. Leave to amend may be denied due to "repeated failure to cure deficiencies by amendments previously allowed[.]" *Foman v. Davis*, 371 U.S. 178, 182 (1962). Accordingly, the Court grants the motion to dismiss without further leave to amend.

### III. CONCLUSION

Although the Court sympathizes with Mr. Richardson, the Court is without authority to grant him the relief he seeks. For the foregoing reasons, the Court GRANTS Defendants' motion to dismiss. Dkt. No. 60.

Dated this 29th day of September, 2023.



Lauren King  
United States District Judge

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

NOV 13 2025

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FREDERICK W. RICHARDSON,

Plaintiff - Appellant,

v.

UNITED STATES DEPARTMENT OF  
LABOR, Office of Workers Compensation  
Programs (OWCP); et al.,

Defendants - Appellees.

No. 23-3130

D.C. No. 2:20-cv-00923-LK

Western District of Washington,  
Seattle

ORDER

Before: SILVERMAN, LEE, and VANDYKE, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 40.

The petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 19) are denied.

No further filings will be entertained in this closed case.




### CERTIFICATE OF SERVICE

I certify that on this *11th of February, 2026* I served a copy of the foregoing Application for Extension of Time and Appendix on the following:

U.S. Department of Justice  
Civil Division, Appellate Staff  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Service was made by U.S. Mail, Certified Priority Mail postage prepaid.

  
Frederick W. Richardson  
Pro Se Petitioner