

Bettina B. Plevan (BP-7460)
Steven E. Obus (SO-9791)
PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036
(P): 212.969.3000
(F): 212.969.2900

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
ELAINE CLARK, RAYMOND GIANGRASSO, TONY :
GONZALES, JOHNNY L. HEATHERMAN, and :
MONELL WHITE, individually on behalf of themselves, :
and on behalf of all those similarly situated :

Plaintiffs, :

v. :

JO ANNE B. BARNHART, Commissioner of the Social :
Security Administration, in her official capacity, and the :
SOCIAL SECURITY ADMINISTRATION, Defendants, :

Defendants. :

**NATIONWIDE CLASS
ACTION COMPLAINT**

06 cv 15521 (SHS) (RLE)

----- X
INTRODUCTION

1. Plaintiffs bring this class action on behalf of themselves, and on behalf of a nationwide class of similarly situated individuals to challenge defendants Jo Anne B. Barnhart (“Commissioner”) and Social Security Administrations’ (“SSA”) (collectively, “Defendants”) unlawful policy of suspending or denying Old Age, Survivors, and Disability Insurance (“OASDI”) and/or Supplemental Security Income (“SSI”) benefits based on the existence of an outstanding warrant against the beneficiary for an alleged violation of a probation or parole condition without a determination and/or finding that such individual has in fact committed such a violation (“Policy”).

2. Defendants' Policy is based on a crude computer-matching program, which does not involve any effort to inquire into the facts of individuals' cases or even to verify that the individuals named in the warrants are in fact the individuals whose benefits are being suspended or denied.

3. Defendants' Policy violates the Social Security Act, 42 U.S.C. §§ 402(x)(1)(A)(v) and 1382(e)(4)(A)(ii), and the regulations promulgated thereunder. The statute and regulations authorize suspension or denial of benefits only when an individual is found to be actually "violating a condition of probation or parole." Indeed, the Commissioner's own regulation explicitly requires that a suspension or denial of SSI benefits not go into effect except upon a warrant or order "issued by a court or other duly authorized tribunal **on the basis of an appropriate finding that the individual ... is violating, or has violated, a condition of his or her probation or parole.**" 20 C.F.R. § 1339(b) (Emphasis added)

JURISDICTION AND VENUE

4. The Court has jurisdiction over Plaintiffs' claims under 42 U.S.C. §§ 405(g) and 1383(c)(3) as well as 28 U.S.C. § 1361.

5. Venue is proper pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 405(g) in this Court because at least one named Plaintiff resides within this District.

PARTIES

6. Plaintiff ELAINE CLARK is a 63-year-old female who currently resides in Amherst, New York. In or about 1996, Ms. Clark began receiving Social Security Disability Insurance ("SSDI"), a form of OASDI benefits, when she was diagnosed with end-stage renal disease. Since that time, she has been diagnosed with numerous medical conditions, including diabetes mellitus, joint disorders of the lower extremities, hypertension, hyperlipidemia,

depression, esophagitis reflux, osteoporosis, and anemia. In January 2006, retroactive to January 2005, the SSA unlawfully ceased paying benefits to Ms. Clark based on a warrant issued solely on the basis of an allegation that she was violating a condition of probation, notwithstanding the absence of any finding that she had in fact violated any condition of her probation.

7. Plaintiff RAYMOND GIANGRASSO is a 50-year-old male who currently resides in New York, New York. In or about 1987, Mr. Giangrasso began receiving SSI disability benefits after recovering from a three-month-long coma caused by over-prescribed painkillers and sleep medications. The effects of the coma left Mr. Giangrasso with lasting physical and psychological damage, which precluded him from working. In January 2004, the SSA unlawfully stopped paying benefits to Mr. Giangrasso based on a warrant issued solely on the basis of an allegation that he was violating a condition of probation, notwithstanding the absence of any finding that he had in fact violated any condition of his probation.

8. Plaintiff TONY GONZALES is a 63-year-old male who currently resides in Oregon City, Oregon. In or about March 2005, Mr. Gonzales began receiving Social Security retirement benefits, a form of OASDI benefits. In or around September 2005, retroactive to March 2005, the SSA unlawfully suspended Mr. Gonzales' benefits based on a warrant issued solely on the basis of an allegation that he was violating a condition of his probation. To date, there has been no finding that Mr. Gonzales has in fact violated any condition of his probation.

9. Plaintiff JOHNNY L. HEATHERMAN is a 51-year-old male who currently resides in Binghamton, New York. In or about 2001, Mr. Heatherman began receiving SSDI benefits, retroactive to 1999 after a workplace injury in or about 1997. Since that time, Mr. Heatherman has been diagnosed with, among other things, Reflex Sympathetic Dystrophy ("RSD") and bipolar disorder. Mr. Heatherman requires several medications to control the

severe pain from RSD and to control his bipolar disorder. Effective February 2006, the SSA unlawfully suspended Mr. Heatherman's SSDI benefits based on a warrant issued solely on the basis of an allegation that he was violating a condition of his probation. To date, there has been no finding that Mr. Heatherman has in fact violated any condition of his probation.

10. Plaintiff MONNELL WHITE is a 56-years-old male and currently resides in Crescent City, Florida. Mr. White commenced receiving SSDI benefits in 1993. Effective October 2006, the SSA stopped paying benefits to Mr. White based on a warrant issued solely on the basis of an allegation that he was violating a condition of probation, notwithstanding the absence of any finding that he had in fact violated any condition of his probation.

11. Defendant JOANNE B. BARNHART is the Commissioner of the SSA. As such, she is charged with administering and supervising all benefits programs administered by SSA nationwide, including OASDI and SSI. Commissioner Barnhart is sued in her capacity as the official charged with performing the statutory and regulatory duties of the SSA and with supervisory responsibility over the SSA and its divisions, agents, employees and representatives.

12. Defendant SOCIAL SECURITY ADMINISTRATION administers and supervises all SSA benefits programs nationwide under the Social Security Act.

13. All divisions, agents, employees and representatives of Defendants were acting within the scope of their agency or employment while making any of the statements and committing any of the acts alleged herein. Defendants and all of their respective divisions, agents, employees and representatives each acted as the agent or representative of each other in committing any of the acts or making any of the statements alleged herein.

CLASS ACTION ALLEGATIONS

14. Plaintiffs bring this action as a class action pursuant to Rules 23(a), 23(b)(2) and (b)(3), of the Federal Rules of Civil Procedure.

15. Plaintiffs bring this action on behalf of themselves and as representatives of a class of similarly situated persons. The Class consists of:

All persons whose SSI or OASDI benefits were suspended or denied, or whose SSI or OASDI benefits are threatened with suspension or denial based solely on the existence of a warrant issued on the basis of an alleged violation of probation or parole without a finding that such individual has violated his or her probation or parole before such suspension or denial.

16. The class is so numerous that joinder of all members is impracticable. While the exact number of class members is currently unknown and only can be obtained through appropriate discovery, on information and belief, there are, at a minimum, tens of thousands of class members.

17. There are questions of law and fact common to all class members that predominate over questions only affecting individual class members, including, among others: (a) whether 42 U.S.C. §§ 402(x)(1)(A)(v) and 1382(e)(4)(A)(ii) require a finding that an individual is committing or has committed a violation of probation or parole prior to suspending or denying benefits; and (b) whether Defendants have engaged in a pattern of suspending or denying class members' benefits based solely upon the existence of a warrant and absent a finding that an individual is committing or has committed a violation of probation or parole.

18. Plaintiffs' claims are typical of the claims of all class members, and arise from the same course of conduct by Defendants. The relief sought is common to all class members. In addition, Defendants have acted and continue to act on grounds generally applicable to all class members, thereby making injunctive and declaratory relief appropriate to the class as a whole.

19. Plaintiffs will fairly and adequately protect the interests of the class members.

PRESENTMENT AND EXHAUSTION

20. Plaintiffs and class members have presented their claims to the Commissioner within the meaning of 42 U.S.C. § 405(g).

21. Any exhaustion requirement should be waived because Plaintiffs' claims are collateral to their respective claims for benefits, there is irreparable harm, and exhaustion would be futile.

**THE PERSONAL RESPONSIBILITY AND
WORK OPPORTUNITY RECONCILIATION ACT**

22. Effective August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), Pub. L. No. 104-193, 42 U.S.C. §1382(e)(4), amended the Social Security Act by adding a provision authorizing the SSA to suspend or deny SSI benefits to individuals fleeing to avoid prosecution or sentencing for a felony or who are violating probation or parole for any offense, including misdemeanors, violations and other lesser offenses.

23. The PRWORA provides, in relevant part:

No person shall be considered an eligible individual or eligible spouse for purposes of this subchapter with respect to any month during such month the person is —

(A) fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees . . . ;
or

(B) violating a condition of probation or parole imposed under Federal or State law.

42 U.S.C. § 1382(e)(4).

24. In 2004, Congress extended this provision, effective January 1, 2005, to all OASDI benefits. *See* Pub. L. No. 108-203, 42 U.S.C. §402(x), as amended.

25. The implementing regulation for 42 U.S.C. § 1382(e)(4) provides, in relevant part:

(1) Suspension of benefit payments because an individual is a fugitive . . . is effective with the first day of whichever of the following months is earlier —

(i) The month in which a warrant or order for the individual's arrest or apprehension, an order requiring the individual's appearance before a court or other appropriate tribunal (e.g., a parole board), or similar order is issued by a court or other duly authorized tribunal **on the basis of an appropriate finding that the individual —**

(A) Is fleeing, or has fled, to avoid prosecution as described in paragraph (a)(1) of this section;

(B) Is fleeing, or has fled, to avoid custody or confinement after conviction as described in paragraph (a)(2) of this section;

(C) Is violating, or has violated, a condition of his or her probation or parole as described in paragraph (a)(3) of this section.

20 C.F.R. § 1339(b) (emphasis added).

**THE SOCIAL SECURITY ADMINISTRATION'S
APPLICATION OF THE PRWORA AND IMPLEMENTING REGULATIONS**

26. In 2005, United States Court of Appeals for the Second Circuit had occasion to interpret the subsection of 42 U.S.C. § 1382(e)(4) that makes a person ineligible for SSI benefits if the individual is “fleeing to avoid prosecution” for a felony, holding that the SSA may not conclude, simply from the fact that there is an outstanding warrant for a person’s arrest for a felony, that such person is “fleeing to avoid prosecution” within the meaning of 42 U.S.C. § 1382(e)(4). *See Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005). Rather, the Court held that “benefits may be suspended only as of the date of a warrant or order issued by a court or other authorized tribunal on the basis of a finding that an individual has fled or was fleeing from justice.” *Id.* at 97.

27. Likewise, the SSA's policy of suspending or denying SSDI and SSI benefits solely on the basis of an outstanding warrant alleging a probation or parole violation without regard to whether or not there has been a finding that such individual has in fact committed such a violation is unlawful since it does not require any determination of an actual violation before the suspension or denial of benefits.

28. SSA, through its Office of Inspector General ("OIG") has agreements with the National Crime Information Center ("NCIC") maintained by the Federal Bureau of Investigation ("FBI") and with various state and local law enforcement agencies to obtain warrant information from their databases with the purpose of matching that information against SSA's databases of its beneficiaries and recipients. When a match is made, SSA notifies the law enforcement agency and provides the agency "with information that may aid in the apprehension of the individual." SSA, Program Operations Manual System ("POMS") SI 00530.200. If the individual is apprehended and incarcerated, benefits are suspended, not because of this provision but because OASDI benefits cannot generally be paid to an individual who is confined pursuant to a conviction of a criminal offense, 42 U.S.C. § 402(x)(1)(A)(i), and because SSI benefits cannot be paid to an individual who is institutionalized. 20 C.F.R. § 416.211.

29. Only after allowing the law enforcement agency sixty days to secure the individual's arrest or extradition, does OIG place the information regarding the individual into SSA's internal system for notifying the SSA field office so it can begin the process of suspending benefits. SSA, POMS SI 00530.200 & SI 00530.205. Thus, for the most part, those individuals whose benefits are suspended under this provision are not of great interest to law enforcement agencies and in any event law enforcement agencies are not actively seeking their apprehension.

STATEMENT OF FACTS

A. Plaintiff Elaine Clark

30. Plaintiff Clark began receiving SSDI benefits in or about 1996 after being diagnosed with end stage renal disease. She has since received a kidney transplant and is also being treated for diabetes mellitus, joint disorders of the lower extremities, hypertension, hyperlipidemia, depression, esophagitis reflux, osteoporosis and anemia. She takes numerous medications and requires a wheelchair for mobility.

31. SSDI benefits have been Ms. Clark's only source of income.

32. Ms. Clark is enrolled in the Total Aging in Place Program, a managed long-term care plan, and resides in their facility in Amherst, New York. The medical share of the cost of her participation is funded by Medicaid with Ms. Clark paying a small spend-down amount. The remainder of her monthly SSDI benefits check paid the rent to the facility.

33. Ms. Clark first learned that her benefits would be suspended when she received a letter from the SSA, dated December 11, 2005, advising that a warrant had been issued for her arrest because she had allegedly violated the terms of her probation.

34. By letter dated December 30, 2005, Ms. Clark's attorney filed a Request for Reconsideration on her behalf,

35. By letter dated January 19, 2006, the SSA informed Ms. Clark that her benefits were suspended immediately and that the benefits should have been suspended effective January 2005, but since payments had continued, she had been overpaid \$9,235.

36. By letter dated January 26, 2006, Ms. Clark's attorney again wrote to the SSA, with an extended Request for Reconsideration on behalf of Ms. Clark.

37. Almost one year later on December 23, 2006, Ms. Clark received a letter from SSA dated December 24, 2006 affirming the initial determination and denying the Request for Reconsideration.

38. The impact on Ms. Clark's life has been devastating as a result of the suspension of her benefits. She has been unable to pay her rent and has been threatened with eviction from the facility. The most current statement from the facility states that she owes \$5,741.16 in rent and \$946 in her Medicaid share-of-cost for a total of \$6,687.16. The facility has given her a referral to a homeless shelter where she fears that someone with her medical conditions would not be able to survive. She sees no hope in her life and has contemplated suicide. Although she has sought counseling, she does not believe it is helping her. Since losing her benefits, she has been hospitalized for falls on two separate occasions, each time fracturing her pelvis, first on the right side and then on the left side.

B. Plaintiff Raymond Giangrasso

39. Plaintiff Giangrasso began receiving SSI disability benefits in or about 1987 after recovering from a three-month-long coma caused by over-prescribed painkillers and sleep medications. Mr. Giangrasso was left with lasting physical and psychological damage which precluded him from working. Since 1995, Mr. Giangrasso has been hospitalized more than thirty times, suffering from ailments such as a broken collarbone caused by a hit-and-run driver, blood clots, repeated bouts of pneumonia, severe back problems, sinus infections, and petit mal seizures.

40. By letter dated December 2, 2003, Mr. Giangrasso received a Notice of Planned Action from the SSA dated December 2, 2003, stating that his benefits would be suspended retroactive to October 1, 2001, due to an outstanding warrant for an alleged violation of probation.

41. With the assistance of the Urban Justice Center, on January 6, 2005, Mr. Giangrasso requested good cause for a late appeal, pursuant to 20 C.F.R. § 416.1411, a formal conference with the SSA and that the SSA re-open the determination that suspended his benefits. The SSA acknowledged receipt of that Request for Reconsideration by letter dated February 28, 2005, stating that it would review his file to be sure that a proper decision was made, requested that the Urban Justice Center contact it to schedule a time and place for the formal hearing, and stated that since his SSI case was automatically terminated due to nonpayment for at least twelve months, he must reapply if he wanted to receive benefits. Mr. Giangrasso's Request for Reconsideration was denied in July 2005, but he did not learn of that denial until January 2006.

42. Mr. Giangrasso requested a hearing by an administrative law judge on March 15, 2006 with the assistance of the Urban Justice Center on the basis that he was not a fleeing felon, and by letter dated October 25, 2006, the SSA acknowledged receipt of that request.

43. Based upon a new application, the SSA recently determined that Mr. Giangrasso is eligible to receive benefits as of October 2005, but those benefits have not yet been paid. Furthermore, the SSA has refused to reimburse him for those benefits withheld from January, 2004 to October 2005.

44. The impact on Mr. Giangrasso's life as a result of the suspension of his benefits has been devastating. He became unable to pay his rent and was forced to leave his Brooklyn residence. Mr. Giangrasso's mental impairments have been exacerbated as a result of not

receiving benefits, causing him to be in and out of the hospital on several occasions. He has been forced to live in various homeless shelters and on the street where he has been deprived of necessary medications, abused by shelter employees, and had his belongings stolen. Mr. Giangrasso believes that he will not live long, sees no sense in carrying on with life, and has even planned to commit suicide by throwing himself off of a bridge while weighted down by bricks.

C. Plaintiff Tony Gonzales

45. Plaintiff Gonzales began receiving Social Security retirement benefits in March 2005.

46. Mr. Gonzales received from Defendants a pre-suspension letter dated August 29, 2005, stating that the SSA intended to suspend his retirement benefits because of a warrant for an alleged violation of probation in Torrance, California. Although this notice was supposed to be an advance notice, his benefits were suspended immediately and he did not receive any benefits during the months of September or October 2005.

47. On or about September 27, 2005, Mr. Gonzales sent the SSA a Request for Reconsideration, requesting that his benefits continue.

48. The SSA sent Mr. Gonzales a letter dated October 5, 2005, stating that his appeal was premature because the SSA's letter only told him what they had "planned" to do, and that this October 5, 2005 letter constituted the SSA's "official decision" to suspend his benefits beginning March 2005.

49. On October 13, 2005 Mr. Gonzales filed a Request for Reconsideration of the October 5, 2005 notice of suspension.

50. On behalf of Mr. Gonzales, Ms. Ellen Mendoza of the Legal Aid Services of Oregon, wrote to the SSA by letter dated October 14, 2005, stating that Mr. Gonzales previously protested the suspension of his benefits on a Request for Reconsideration form and that he would provide information to establish good cause. In addition, Ms. Mendoza stated that according to the SSA's policy manual, Mr. Gonzales should be given ninety days from his protest (September 27, 2005) to prove that he meets good cause and that in the interim his benefits should continue. Accordingly, Ms. Mendoza requested that the SSA provide Mr. Gonzales with the October 2005 benefits that he did not receive and allow Mr. Gonzales until December 27, 2005 to prove his good cause.

51. In response to Ms. Mendoza's October 14, 2005 letter, the SSA wrote to Mr. Gonzales by letter dated October 18, 2005, stating that it had reinstated his benefits for up to ninety days from his initial protest on September 27, 2005 and that he had until December 26, 2005 to provide good cause if he wanted his benefits to continue past that date.

52. Prior to the expiration of the ninety day period, the SSA wrote two letters dated November 23, 2005 to Mr. Gonzales. The first stated that the SSA had overpaid him \$3,428. The second stated that the SSA cannot pay him benefits beginning March 2005, and that because the SSA had previously paid him benefits for the period March 2005 through September 2005, he was paid \$3,801 more than he was due.

53. With the assistance of Ms. Mendoza, on or about December 21, 2005, Mr. Gonzales completed a Request for Reconsideration (acknowledged as received on December 21, 2005) to appeal the determinations contained in the November 23, 2005 notices. His Request for Reconsideration was denied by letter dated December 28, 2005.

54. With the assistance of Ellen Mendoza of the Legal Aid Services of Oregon, on or

about January 23, 2006, Mr. Gonzales completed and filed a Request for Hearing by Administrative Law Judge. By letter dated January 30, 2006, the SSA acknowledged that request. To date, Mr. Gonzales not been notified that that the hearing has been scheduled.

55. In June 2006, Ms. Mendoza provided SSA with a court order disposing of the warrant and SSA agreed to restore Mr. Gonzales benefits on a prospective basis only.

56. SSA sent Mr. Gonzales a notice dated July 19, 2006 telling him that he had been overpaid \$5,463. He began receiving retirement checks again in August 2006, but the SSA withholds a portion of the benefit each month to recover the alleged overpayment.

57. The impact on Mr. Gonzales' life has been devastating. The loss of benefits has caused considerable emotional distress. No one at SSA offered him any assistance whatsoever and he has had to obtain assistance from attorneys in Oregon and California to assist him.

D. Plaintiff Johnny L. Heatherman

58. Plaintiff Heatherman began receiving SSDI disability benefits in 2001, retroactive to 1999.

59. Mr. Heatherman suffers from bipolar disorder and Reflex Sympathetic Dystrophy (RSD), both of which require several medications to control.

60. In November 2005, Mr. Heatherman received from Defendants a pre-suspension letter stating that, because he allegedly had violated the conditions of his probation, his SSDI benefits would be suspended.

61. Upon receiving the pre-suspension letter, Mr. Heatherman called the telephone number provided in the notice to inform the SSA that there had been a mistake, to advise them that he had not violated the terms of his probation, and to find out what he needed to do to ensure that the SSA would not suspend his benefits.

62. Notwithstanding Mr. Heatherman's repeated attempts to provide the SSA with all the information it requested, he received a suspension notice from the SSA in January 2006, advising that his benefits would stop immediately. Mr. Heatherman again called the number provided on the notice and asked for an appeal form, but the individual who answered the telephone told Mr. Heatherman that SSA would not send him such a form because there was no reason to appeal the suspension until the alleged warrant that had been issued with respect to him had been cleared.

63. Mr. Heatherman then called the local SSA office and spoke to another individual who also proved to be of no assistance. Notwithstanding his efforts, Mr. Heatherman's benefits were suspended effective February 2006.

64. Eventually, on or about March 10, 2006, Mr. Heatherman received and filed a Request for Reconsideration. To date, SSA has taken no action on his Request for Reconsideration.

65. The impact on Mr. Heatherman and his family as a result of the suspension of his benefits has been devastating. They are hardly able to make ends meet and are without medical coverage. In fact, as a result of his suspension of benefits, Mr. Heatherman is in the process of filing for bankruptcy.

E. Plaintiff Monnell White

66. In 1991, Mr. White applied for benefits on the basis of a bipolar disorder and schizoaffective disorder, which is a combination of psychotic and mood disorder symptoms. Mr. White, however, did not begin receiving SSDI disability benefits until 1993.

67. Through a letter dated July 19, 2006, which he received in August 2006, Mr. White first learned that the SSA intended to suspend his benefits because of an alleged warrant for violation of probation in Cleveland, Ohio.

68. Upon receipt of that July 19, 2006 letter, Mr. White visited the SSA office in Palatka, Florida where he was told to speak with the police in Cleveland, Ohio. Mr. White then went to the local police department in Crescent City, Florida and contacted the Cuyahoga County Sheriff's Department in Ohio. The Ohio authorities stated they were not interested in extraditing Mr. White. Although he requested that they provide him with some documentation reflecting that decision, they refused to do so.

69. Mr. White called the SSA with the information he learned from the Ohio authorities, but was told that the SSA needed documentary proof from the Ohio authorities to restore his benefits. Notwithstanding the foregoing, when Mr. White received his September 2006 benefits check, he thought the issue had been resolved. Towards the end of September 2006, however, after Mr. White received his September benefits check, he received a notice of benefit suspension dated September 8, 2006.

70. Mr. White then returned to the Crescent City, Florida police department and asked to be arrested on the basis of the Cleveland, Ohio warrant, but the police refused to arrest him.

71. Also in September, 2006, Mr. White called the SSA office and was told that he could not file an appeal until he had documentary proof from the Ohio authorities.

72. Thereafter, Mr. White went to the Christian Service Center in Crescent City, Florida and, with the assistance of volunteer Martha Adams, contacted the Cuyahoga County Prosecutors' Office to have the matter resolved. The Christian Service Center contacted the Legal Aid Society of Cleveland which assisted Mr. White in filing a Motion to Terminate

