

# Class Action Settlement to Restore Benefits to More Than 200,000 Disabled and Elderly

By Emilia Sicilia

A recent settlement reached in the class action *Martinez v. Astrue*<sup>1</sup> requires the Social Security Administration (SSA) to dramatically change its implementation of the “fleeing felon” provisions of the Social Security Act (Act) and provide relief to over 200,000 class members, including the restoration of more than \$500 million in retroactive benefits to 80,000 individuals. The subject of the suit was the Act’s provisions denying Supplemental Security Income (SSI) and Old Age, Survivors and Disability Insurance program (OASDI) benefits to individuals “fleeing to avoid prosecution, or custody or confinement” for a felony.<sup>2</sup> To implement this “fleeing” provision, SSA had been automatically suspending and denying benefits – often an individual’s only means of subsistence – based solely on the existence of a warrant, regardless of whether the person was even aware of the warrant or had any intention to flee the charges. The *Martinez* settlement ensures that SSA will suspend benefits based on a warrant only if it is issued specifically for a charge of flight or escape.

Historically speaking, SSA’s policy was borne of the welfare reform effort of the 1990s, and an agenda to diminish the public safety net. Politically, it has been branded a way to bring criminals to justice. In practice, SSA obtains warrant information from law enforcement and relays names of beneficiaries with outstanding warrants to law enforcement agencies so that they may take appropriate action. The law enforcement aspect of the policy is therefore limited to this data-sharing feature, as that is what leads to arrests. But for SSA, the suspension and denial of benefits – which occur after SSA has apprised law enforcement of a person’s whereabouts – had been permitting the agency to “save” millions in unpaid benefits from the most vulnerable citizens it is charged to protect. For those affected, there have been devastating and senseless results.

One common scenario is that of a Florida man with bipolar disorder whose disability benefits were suspended in 2008 for a 1996 Texas warrant issued for writing a check with insufficient funds to a grocery store. He had been living in Texas at that time for a temporary job assignment, but he was unaware his check had bounced or that charges had been filed. Like many class members, he was unaware a warrant had been issued until SSA suspended his benefits. Without benefits, he was unable to pay for food or rent. He also faced a demand from SSA that he pay \$43,000 in benefits he was “overpaid” in the years since 2005.

Since the settlement, some lawmakers involved in the original design of this program have indicated plans to introduce legislation to undo the changes resulting from *Martinez*, arguing that amending the law is necessary to continue identifying wanted criminals. In reality, the settlement explicitly left intact SSA’s ability to share information with law enforcement regarding all warrants, and does not in any way hinder law enforcement’s ability to apprehend individuals. This data-sharing was never even challenged in *Martinez*.

The SSA’s pre-*Martinez* policy was, at its core, an effort to avoid paying benefits to individuals otherwise eligible to receive them. Ill-conceived and rife with problems, it wreaked extensive havoc on the lives of poor, elderly, and disabled individuals dependent upon such benefits. The settlement will assist many to rebuild their lives. Advocates can play a crucial role in learning about the settlement to ensure that class members get the relief to which they are entitled.

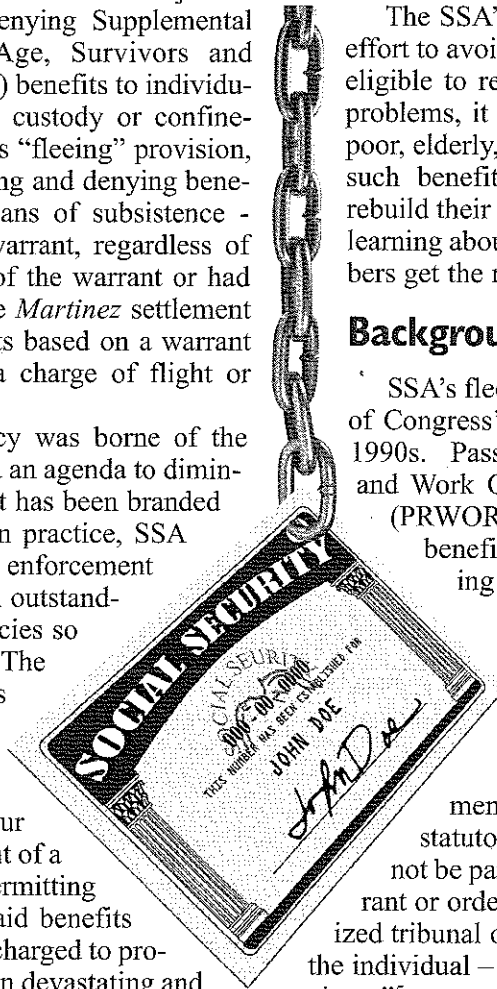
## Background

SSA’s fleeing felon policy is a lesser-known element of Congress’ large-scale welfare reform effort of the 1990s. Passed in 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996<sup>3</sup> (PRWORA) prohibited payment of certain federal benefits, including SSI, to individuals “(A) fleeing to avoid prosecution, or custody or confinement... for a crime... which is a felony... or (B) violating a condition of probation or parole.” Similar provisions were passed for other benefits programs.

SSA promulgated regulations to implement this provision in 2000.<sup>4</sup> It repeated the statutory language but added that benefits would not be paid in any month in which there was a warrant or order “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...”<sup>5</sup>

Eight years after PRWORA, Congress significantly expanded the reach of this policy by extending the prohibition to OASDI.<sup>6</sup> The 2004 law also included a set of “good cause” provisions permitting SSA to pay benefits under certain circumstances. These provisions provided a mandatory exception when there is a not-guilty finding, dismissal, or if the warrant is vacated.<sup>7</sup>

The law also made discretionary good cause available when the underlying charges are non-violent and not drug related, and there were other mitigating factors present.<sup>8</sup> SSA’s policy instructions set forth strict requirements for these mitigating factors. In addition to the statutory require-



ment that the underlying charge be non-violent and not drug-related, SSA permitted discretionary good cause only if there were no felony convictions since the issuance of the warrant, and either (1) law enforcement reports that it will not extradite, or (2) the only existing warrant is more than 10 years old and the beneficiary has an impaired mental capacity, is incapable or legally incompetent, or has a representative payee or resides in a long-term care facility.<sup>9</sup>

Regulations were proposed regarding the OASDI program but were not adopted.<sup>10</sup>

## An Overexpansive Policy

SSA adopted an overbroad interpretation of these provisions to mean that a person is “fleeing” prosecution for a felony or “violating” a condition of probation or parole “when a person has an outstanding warrant for his or her arrest, even if that person is unaware of that warrant.”<sup>11</sup> To implement, the agency put into place a policy of relying only on outstanding warrant information to deny or suspend benefits. SSA entered into agreements with law enforcement agencies across the country to obtain information about outstanding warrants and share data about benefit recipients and applicants. After a data-match indicates that a recipient has an outstanding warrant, SSA notifies law enforcement of the recipient’s address and provides the agency the opportunity to apprehend the individual. After waiting 60 days for law enforcement to act, SSA then takes steps to suspend or deny benefits.

Therefore, it is only individuals who are not pursued by law enforcement who have their benefits suspended or denied. Law enforcement has already been apprised of an individual’s whereabouts before SSA suspends or denies benefits. In reporting that the program has led to 87,600 arrests since 1996, SSA notes that it is the data-sharing efforts – and thus, not the suspension of benefits – which contribute to the arrests.<sup>12</sup>

In addition to working in contradiction to the language of the statute, SSA’s pre-*Martinez* policy had numerous other serious flaws.<sup>13</sup> By definition, the individuals dependent on OASDI and SSI included poor, elderly, and disabled individuals. And most of the warrants that law enforcement choose not to resolve – even when presented with information regarding the individuals’ whereabouts – involve charges filed years or even decades earlier for relatively minor offenses and in jurisdictions quite far from the place the individual now resides. Most recipients are limited in their ability to travel and to navigate the daunting task of remotely resolving a warrant in another state, often years later and without the benefit of the assistance of counsel. Cut off from their income, it becomes even less feasible.

Many class members first learn of a warrant when benefits are denied and are consequently in the position of having to disprove a charge they know little or nothing about, with a minimal amount of information provided by SSA. There are many circumstances where a person may not know of a warrant. Sometimes, it is the result of identity fraud. Criminals also often use aliases when arrested. Sometimes the warrant is intended for someone with a sim-

ilar or common name. In other instances, a person may have left the jurisdiction after charges are filed and without knowing he or she was under investigation. Even when the person has come into contact with the police, he or she may not have the intention to flee. They may have had been hospitalized, or may lack the mental capacity to form the intention to flee.

Efforts to resolve a warrant in another state involve many obstacles. Without being able to appear on a matter, it is difficult to get a public defender, judge, or prosecutor to look at the case at all, let alone to obtain the level of proof demanded by SSA to resume benefits. In fact, the older and less serious the matter, the more difficult it is to obtain the information, witnesses, and evidence necessary to have the case dismissed.

Solving the problem of a fleeing felon suspension was no easy task even for those with representation. Due process rights available for all agency determinations vanish in fleeing felon cases because SSA representatives routinely turn away appeals, insisting, invariably and incorrectly, that the only recourse is to resolve the warrant. Even when aware of the right to appeal, individuals and attorneys did not always perceive a basis to do so because SSA’s notice of suspension misleadingly stated, in complete contradiction to the statute, that the law prohibited it from paying benefits when there is an outstanding warrant. Additionally, appeals were often conflated with the good cause mechanism, which is only an exception, and not the means to challenge the basis for the appeal.

The good cause exception, in turn, was simply too limited and too strictly defined for it to ensure any fairness. The exclusion of charges categorized as violent or drug-related encompassed a wide range of low-level charges. And while law enforcement was almost always uninterested in the person – the suspensions occur after the agency had already been provided with the person’s name and whereabouts – it was not always willing to provide documentation held necessary by SSA to satisfy the good cause requirement.

By conflating the existence of a warrant with flight, SSA employed a policy divorced from both the language of the statute, and from the reality of how and when warrants are issued. The burden is inappropriately placed on the individual – who lacks the ability and resources – to prove otherwise, but without a functioning appeals process.

## Success Through Litigation

Because of how extraordinarily difficult it was to appeal a fleeing felon determination, few federal courts had ruled on the issue. Those that had, however, were unanimous in finding SSA’s policy of determining a person was “fleeing” based solely on the existence of a warrant to be contrary to the statute. SSA was forced to abandon its policy in the states that make up the Second Circuit, where the only appellate decision was issued. In response to the decision in *Fowlkes v. Adamec*, SSA issued an Acquiescence Ruling

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affirming its policy of finding flight based only on a warrant, even if the person was unaware of it. SSA carried on with its "fleeing" policy in the rest of the country until the settlement in *Martinez*.

*Martinez* was filed in October 2008 as an attempt to obtain a court decision that would bind SSA in all jurisdictions. Plaintiffs were represented by National Senior Citizens Law Center; Munger, Tolles & Olson; Urban Justice Center; Disability Rights California; and the Legal Aid Society of San Mateo County. Filed as a class action, the plaintiffs claimed SSA's implementation of the "fleeing" provision violated the Act.<sup>14</sup> The named plaintiffs' experiences demonstrated the misguided nature of SSA's policy. Lead plaintiff Rosa Martinez, for instance, had her disability benefits suspended for a warrant issued for drug possession in 1980 in Miami. Ms. Martinez had never been to Miami and was pregnant in Chicago at the time of the charges. She was also eight inches shorter than the "Rosa Martinez" identified in the warrant. Despite this, SSA refused to reinstate benefits until the warrant was vacated.

After several months of motion practice, the parties reached a settlement in April 2009, just prior to an initial hearing on the merits. The settlement received court approval on September 24, 2009 and went into effect November 30, 2009.

Over 200,000 individuals are expected to benefit from the settlement. Approximately 80,000 may be eligible to receive over \$500 million in back benefits, which SSA will administer in stages depending on the type of benefit involved, and the timing of the suspension, denial, or appeal.

The settlement provides for a new policy whereby SSA will now rely on a warrant to suspend or deny benefits for "flight" only if the warrant was issued with one of the three NCIC codes indicating flight or escape. The three codes represent 0.7 percent of warrants identified by SSA. As of April 1, 2009, the new policy should be applied to all decisions, including pending claims.

Class members whose benefits were suspended or denied on or after January 1, 2007, or those who had a live, pending administrative claim as of August 11, 2008 will receive full retroactive benefits for the entire period benefits were suspended or denied. Within this group, OASDI recipients will be reinstated retroactively by June 2010. SSI recipients are scheduled to receive full retroactive reinstatement by December 2010. For these class members, it will not be necessary to file a new application. The process should be automatic for most OASDI beneficiaries, but SSI recipients will have to re-establish eligibility.

Those whose benefits were suspended or denied between 2000 and 2007 will have the opportunity to have benefits reinstated effective April 1, 2009 if they contact SSA within six months of the notice to re-apply. These individuals are scheduled to receive a notice by the end of this year, and will have any overpayments waived.

## Accessing Relief Under *Martinez*

Implementation of the relief to be provided under *Martinez* is already underway. To ensure that class members receive the relief to which they are entitled, it is essential that class members check that SSA has their updated addresses. SSA will issue only one notice. Because class members are likely to have had their housing impacted by the loss of benefits, they may have moved or been rendered homeless since the time they had benefits suspended or denied. This makes it crucial that advocates and service providers are aware of the settlement and can assist class members in accessing relief.

For more detailed information about the implementation of *Martinez*, see "Social Security Retreats from 'Unknowing Flight' Doctrine and Will Pay Hundreds of Millions in Back Benefits," by Gerald McIntyre, Anna Rich, and Kevin Prindiville, appearing in the January-February 2010 issue of *Clearinghouse Review Journal of Poverty Law & Policy*, (available at [www.povertylaw.org/clearinghouse-review](http://www.povertylaw.org/clearinghouse-review).)

Information is also available at [www.urbanjustice.org/ujc/litigation/mental.html](http://www.urbanjustice.org/ujc/litigation/mental.html). Also, for regular updates about the settlement's implementation, including information about the continued effort to challenge the suspension of benefits for alleged probation and parole violations, advocates may join the National Senior Citizens Law Center's "Martinez Settlement Listserv" by emailing [Oakland@nscclc.org](mailto:Oakland@nscclc.org).

## Other Developments

More developments may lay ahead. Following the *Martinez* settlement, SSA and a few lawmakers indicated they may pursue legislation to undo the new rules resulting from *Martinez*. A set of proposed legislative changes sent by SSA to the Office of Management and Budget last summer included a clarification of the agency's "fleeing felon" policy. And in October, 2009, SSA's Office of the Inspector General issued a report at the request of some members of Congress regarding the impact of *Martinez*. The report focused on the monetary cost to the agency.

The fate of SSA's "fleeing felon" penalty may impact other benefit programs. The course of SSA's policy – more expansive and more frequently litigated – has come to bear on other benefits such as Veterans Administration, food stamps, and Temporary Assistance for Needy Family (TANF), which have similar, sometimes identical, provisions. In the past, other agencies have taken note of developments in SSA's policy. Following *Fowlkes*, for instance, New York State's Office of Temporary and Disability Assistance ceased suspending food stamps and cash assistance based on warrants alone and adopted the standard indicated in *Fowlkes*, requiring a finding of flight by a court or tribunal, and some evidence that the individual knew he or she was wanted.<sup>15</sup> Hopefully, the *Martinez* settlement may encourage other agencies to abandon overbroad interpretations and implementation. ☆

<sup>1</sup> *Martinez v. Astrue*, No. 08-cv-4735 CW (N.D. Cal. Sept. 26, 2009).

<sup>2</sup> 42 U.S.C. § 1382(e).

<sup>3</sup> Pub. L. No. 104-193, 110 Stat. 2105, Sec. 202.

<sup>4</sup> 65 Fed. Reg. 40492 (Jun. 30, 2000).

<sup>5</sup> 20 C.F.R. § 416.1339(b)(i).

<sup>6</sup> Pub. L. No. 108-203, March 2, 2004, *codified at* 42 U.S.C. § 402(x).

<sup>7</sup> 42 U.S.C. §§ 402(x)(1)(B)(iii), 1382(e)(4)(B).

<sup>8</sup> 42 U.S.C. §§ 402(x)(1)(B)(iv), 1382(e)(4)(C).

<sup>9</sup> POMS SI 00530.015B2, GN 02613.025B2.

<sup>10</sup> 70 Fed. Reg. 72411.

<sup>11</sup> Social Security Acquiescence Ruling 06-1(2), *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005); Determining Whether an Individual is a Fugitive Felon Under the Social Security Act (Act) – Titles II and XVI of the Act, Federal Register, Vol. 71, No. 66, at page 17551 (Apr. 6, 2006) (emphasis added); SSA, Program Operations Manual System (POMS), GN 02613.001.B.3.

<sup>12</sup> Social Security Administration Office of the Inspector General, Semi-Annual Report to Congress April 1 to September 30, 2009 at

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<sup>13</sup> For a longer discussion, see W. Lienhard & J. Parish, Social Insecurity: How the Social Security Administration's "Fugitive Felon Program" Harms Disabled,

Retired and Poor Americans Without Aiding Law Enforcement, available at

[http://www.urbanjustice.org/pdf/projects/Social\\_Insecurity\\_10\\_07.pdf](http://www.urbanjustice.org/pdf/projects/Social_Insecurity_10_07.pdf).

<sup>14</sup> *Martinez* was limited to SSA's implementation of the "fleeing" provision of the statute, and did not address SSA's practice of suspending and denying benefits without a finding that the individual had violated probation or parole. This represents 38.6 percent of warrants and is the subject of a separate lawsuit, *Clark v. Astrue*, 2008 WL 4387709 (S.D.N.Y. Sept. 22, 2008), appeal docketed, No. 08-5801-cv (2d Cir. 2008). SSA prevailed on a motion for summary judgment in *Clark*, and the case is now pending before the Second Circuit.

<sup>15</sup> General Information System (GIS) 08 TA/DC016 (July 22, 2008), available at [www.otda.state.ny.us/main/gis/2008/08dc016Upstate.pdf](http://www.otda.state.ny.us/main/gis/2008/08dc016Upstate.pdf).

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about these issues. We need partners at the federal, state, and local levels, both within and outside of government, to be involved. By sharing information and working together, I believe we can build on the good work that has gone into developing model standards for our public defense systems.

Second, we must raise awareness about what we're up against. As Americans understand how some of their fellow citizens experience the criminal justice system, they will be shocked and angered – feelings I hope would compel them to become advocates for change and allies in our work.

Third, we must expand the role of the public defender. We must encourage defenders to seek solutions beyond our courtrooms and ensure that they're involved in shaping policies that will empower the communities they serve. I'm committed to making sure that public defenders are at the table when we meet with other stakeholders in the criminal justice system. I have charged the Department's leadership with calling on our components to include members of the public defense system in a range of meetings. We will also involve defenders in conferences, application review panels, and other venues where a public defense perspective can be valuable. And it should not go without saying – every state should have a public defender system. Every state."

Holder concluded his remarks with a pledge to do his own best efforts as together, the community of indigent defense professionals and advocates "return to the beliefs that guided our nation's founding and to renew the strength of our justice system."

The Symposium's opening plenary session, Fulfilling the Promise of Counsel, moderated by NLADA President and CEO Jo-Ann Wallace immediately followed Holder's remarks. The plenary featured speakers Avis Buchanan, director, Public Defender Service for the District of Columbia, Washington, DC; The Honorable Michael A. Cherry, Supreme Court Justice, Nevada Supreme Court, Carson City, NV; Nancy Diehl, retired attorney, Wayne County Prosecutor's Office, Detroit, MI; The Honorable Lydia P. Jackson, state senator, Louisiana Senate, Shreveport, LA; and Norman Lefstein, professor of law and dean emeritus, Indiana University School of Law, Indianapolis, IN. The opening plenary speakers represented myriad arenas of the public defense system. They were challenged to address the lessons learned from failed attempts at public defense reform as well as successful efforts and to think beyond past practices as they explored what it will take to secure the right to counsel in America. To read the Attorney General's remarks in full, review the Symposium's agenda and to view the morning and afternoon plenary sessions, please visit <http://www.nlada.net/library/article/aghhold-keynotessymposium02-18-2010>. ☆