

1 DAVID H. FRY (SBN 189276)  
David.Fry@mto.com  
2 MARK R. CONRAD (SBN 255667)  
Mark.Conrad@mto.com  
3 JEREMY S. KROGER (SBN 258956)  
Jeremy.Kroger@mto.com  
4 MUNGER, TOLLES & OLSON LLP  
5 560 Mission Street, 27th Floor  
San Francisco, CA 94105-2907  
T: (415) 512-4000 / F: (415) 512-4077  
6

7 GERALD A. McINTYRE (SBN 181746)  
gmcintyre@nslc.org  
8 NATIONAL SENIOR CITIZENS LAW CENTER  
3435 Wilshire Blvd., Suite 2860  
Los Angeles, CA 90010-1938  
9 T: (213) 674-2900 / F: (213) 639-0934

10 ANNA RICH (SBN 230195)  
arich@nslc.org  
11 KEVIN PRINDIVILLE (SBN 235835)  
kprindiville@nslc.org  
12 NATIONAL SENIOR CITIZENS LAW CENTER  
1330 Broadway, Suite 525  
13 Oakland, CA 94612  
T: (510) 663-1055 / F: (510) 663-1051  
14 Attorneys for Plaintiffs

15 ADDITIONAL COUNSEL LISTED ON NEXT PAGE  
16

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 OAKLAND DIVISION

20 ROSA MARTINEZ, JIMMY HOWARD,  
ROBERTA DOBBS, BRENT  
21 RODERICK, SHARON ROZIER, and  
JOSEPH SUTRYNOWICZ, on behalf of  
22 themselves and all others similarly situated,

23 Plaintiffs,

24 vs.

25 MICHAEL J. ASTRUE, Commissioner of  
Social Security, in his official capacity,  
26

27 Defendant.  
28

CASE NO. 08-CV-4735 CW

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT, CLASS CERTIFICATION,  
AND APPOINTMENT OF CLASS  
COUNSEL, AND DIRECTING CLASS  
NOTICE AND SETTING FINAL  
FAIRNESS HEARING**

**The Hon. Claudia Wilken**

1 EMILIA SICILIA  
esicilia@urbanjustice.org  
2 JENNIFER PARISH  
jparish@urbanjustice.org  
3 URBAN JUSTICE CENTER  
123 William Street, 16th Fl.  
4 New York, NY 10038  
T: (646) 602-5668 / F: (212) 533-4598

5 CHRISTOPHER A. DOUGLAS (SBN 239556)  
cdouglas@legalaidsmc.org  
6 M. STACEY HAWVER (SBN 146012)  
mshawver@legalaidsmc.org  
7 LEGAL AID SOCIETY OF SAN MATEO COUNTY  
8 521 East 5th Avenue  
San Mateo, CA 94402  
9 T: (650) 558-0915 / F: (650) 558-0673

10 MARILYN HOLLE (SBN 61530)  
marilyn.holle@disabilityrightsca.org  
11 DISABILITY RIGHTS CALIFORNIA  
3580 Wilshire Blvd. Suite 902  
12 Los Angeles, CA 90010-2522  
T: (213) 427-8747 / F: (213) 427-8767

13  
14 Of Counsel for Plaintiffs ROSA MARTINEZ, JIMMY  
HOWARD, ROBERTA DOBBS, BRENT RODERICK,  
15 SHARON ROZIER, JOSEPH SUTRYNOWICZ, and all  
others similarly situated

16  
17 JOSEPH P. RUSSONIELLO (CSBN 44332)  
United States Attorney  
18 JOANN M. SWANSON (CSBN 88143)  
Chief, Civil Division  
19 VICTORIA R. CARRADERO (CSBN 217885)  
Assistant United States Attorney  
20 ANDREW Y.S. CHENG (CSBN 164613)  
Assistant United States Attorney  
21 MICHAEL T. PYLE (CSBN 172954)  
Assistant United States Attorney

22  
23 450 Golden Gate Avenue, 9th Floor  
San Francisco, California 94102-3495  
24 Telephone: (415) 436-6813  
Facsimile: (415) 436-6748  
25 Email: andrew.cheng@usdoj.gov  
Attorneys for Federal Defendant

26  
27  
28



1           1. Settlement Class. The Court finds: (a) that the members of the proposed  
2 settlement class are sufficiently numerous—with tens of thousands of individuals who could be  
3 entitled to relief under the claims asserted through this action—that the joinder of all such  
4 individuals as plaintiffs in this action would be impracticable; (b) that there are questions of law  
5 common to the proposed class, including the lawfulness of certain policies adopted by the Social  
6 Security Administration in its administration of the OASDI, SSI, and SVB federal benefits  
7 programs; (c) that the claims of the named plaintiffs, or class representatives, are typical of the  
8 claims of the proposed settlement class; and (d) that the class representatives are capable of fairly  
9 and adequately protecting the interests of the proposed settlement class. The Court further finds  
10 that the Social Security Administration has administered and applied the challenged Policy in a  
11 manner that applies generally to the proposed settlement class. Therefore, the Court holds that  
12 certification of the proposed class is appropriate under Federal Rule of Civil Procedure 23(b)(2),  
13 and the following class of plaintiffs (hereinafter “Settlement Class”) is hereby CERTIFIED:

14           All persons whose SSI, SVB, or OASDI benefits have been suspended or denied,  
15 or who have been notified of a proposed suspension or denial of such benefits, for  
16 “fleeing to avoid prosecution or custody or confinement after conviction” for a  
17 felony or who are not permitted to serve as Representative Payees for SSI, SVB  
18 or OASDI benefits for “fleeing to avoid prosecution or custody or confinement  
19 after conviction” for a felony. The class shall not include, and this settlement shall  
20 not apply to, any individual who has received a final federal court disposition  
21 regarding payment or nonpayment of benefits due to fugitive felon status.

22           2. Class Counsel. The Court finds that Plaintiffs’ counsel have provided and will  
23 continue to provide representation that is adequate to protect the interests of the Settlement Class.  
24 Specifically, the Court finds that Plaintiffs’ counsel have identified and investigated potential  
25 claims, have vigorously prosecuted the lawsuit thus far, and have committed substantial resources  
26 to their representation of the Settlement Class. Further, Plaintiffs’ counsel possess knowledge  
27 and expertise sufficient to represent the interests of the Settlement Class in an action regarding the  
28 rights of beneficiaries under federal entitlement and benefits programs, including the application  
of the policy challenged in this lawsuit. Therefore, pursuant to Rule 23(c)(1) and Rule 23(g), the  
National Senior Citizens Law Center; the law firm of Munger, Tolles & Olson LLP; the Urban

//

1 Justice Center; the Legal Aid Society of San Mateo County; and Disability Rights California  
2 (hereinafter "Class Counsel") are hereby APPOINTED as counsel for the Settlement Class.

3 3. Preliminary Approval of Stipulation of Settlement. The Court finds that the  
4 terms of the parties' Stipulation of Settlement are fair, reasonable, and adequate to the Settlement  
5 Class. Specifically, the Court finds that the SSA's agreement to amend the challenged policy  
6 constitutes substantial and immediate prospective relief that has benefited and will benefit the  
7 Settlement Class. The Court further finds that the direct relief provided to the vast majority of the  
8 Settlement Class—including (a) the reinstatement of class members' benefits denied or suspended  
9 on or after January 1, 2007, insofar as the denial or suspension was premised on fugitive felon  
10 status, as explained in the Stipulation of Settlement, and (b) the elimination of outstanding  
11 overpayment balances based on such fugitive felon status with the availability of a protective  
12 filing date for class members whose benefits were denied or suspended between January 1, 2000,  
13 and December 31, 2006, and are not in pay status as of April 1, 2009, based on such fugitive felon  
14 status, as explained in the Stipulation of Settlement—is a reasonable compromise of claims in  
15 light of the complexity and risk of further litigation. Therefore, pursuant to Rule 23(e), the  
16 parties' Stipulation of Settlement is hereby preliminarily APPROVED.

17 4. Notice of Settlement. The Court hereby ORDERS that the SSA shall provide  
18 notice to class members by publication of the notice, attached hereto as Exhibit A, on its website.  
19 The Court further ORDERS that Class Counsel disseminate the notice to the following  
20 organizations that advance generally the interests of members of the Settlement Class and that  
21 have resources necessary to advise class members about the existence and terms of the Stipulation  
22 of Settlement: the ABA Commission on Law and Aging; AARP; Bazelon Center for Mental  
23 Health Law; Brennan Center for Justice; Center on HIV Law and Policy; Legal Action Center;  
24 Consortium for Citizens with Disabilities; National Academy of Elder Law Attorneys; National  
25 Alliance on Mental Illness; National Disability Rights Network; National Coalition for the  
26 Homeless; National Law Center on Homelessness and Poverty; National Organization of Social  
27 Security Claimants' Representatives; National Policy and Advocacy Council on Homelessness;

28 //

1 Philippine Veterans Affairs Office (Quezon City); and Sargent Shriver National Center on  
2 Poverty Law.

3 5. Fairness Hearing. The Court ORDERS that a fairness hearing for final  
4 approval of the Stipulation of Settlement shall be held on Thursday, September 24, 2009, at 2:00  
5 p.m. The Court further ORDERS that any objections to the Stipulation of Settlement shall be  
6 filed with the Court not later than Thursday, September 10, 2009.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS SO ORDERED.**

DATED: 8/12/09



The Honorable Claudia A. Wilken  
United States District Court Judge

Submitted by:

DATED: August 12, 2009

MUNGER, TOLLES & OLSON LLP  
Attorneys for Plaintiffs

By: /s/ Mark R. Conrad  
MARK R. CONRAD

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING REGARDING SOCIAL SECURITY'S POLICY ON "FLEEING FELONS" AND OUTSTANDING ARREST WARRANTS**

This notice contains important information if your Social Security retirement, survivors, or disability insurance benefits, Special Veterans Benefits (SVB), or Supplemental Security Income (SSI) payments have been suspended or denied, or if you have not been permitted to serve as a representative payee to beneficiaries of those programs on the ground that you were "fleeing to avoid prosecution or custody or confinement after a conviction" for a felony.

A court has preliminarily approved a settlement of a class action lawsuit on this issue. The case, called *Martinez v. Astrue*, is pending in federal district court in Oakland, California.

The Court has set a fairness hearing to consider a proposed settlement of the claims that have been brought on your behalf in this lawsuit. The hearing is scheduled to be held on September 24, 2009 at 2:00 p.m. at the following address:

Honorable Claudia Wilken  
Courtroom 2  
United States District Court of Northern California  
1301 Clay St.  
Oakland, CA 94612

Because the date and time of that hearing may change, please check with the Court prior to attending the hearing.

The settlement in this case does not concern people whose benefits may have been suspended or denied because of a warrant based on a violation of probation or parole.

**This class action settlement could affect your rights.** Please read below for more information, or call the National Senior Citizens Law Center 510-663-1055 ext. 301.

This notice has three purposes: 1) to tell you about the proposed settlement and the fairness hearing; 2) to tell you how to obtain more information, including a copy of the full proposed settlement agreement; and 3) to explain how you may object to the proposed settlement if you disagree with it.

**What is this Lawsuit About?**

Plaintiffs claimed that the Social Security Administration (SSA) should not suspend or deny SSI, SVB, or Social Security benefits or payments, or refuse to allow people to serve as representative payees, solely on the basis of an outstanding felony arrest warrant. The parties have reached a tentative settlement that the Court has preliminarily approved. The sections below explain some of the key provisions of the tentative settlement.

**Who is in the Settlement Class?**

You may be a Settlement Class Member if your SSI, SVB, or Old Age, Survivors, and Disability Insurance (OASDI) benefits have been suspended or denied, or you are threatened with the suspension or denial of these benefits, based on an outstanding felony

arrest warrant. If you were not permitted to serve as a representative payee for this same reason, you may also be in the Settlement Class.

The Settlement Class does not include people who have already received a final federal court decision in an individual action regarding SSA's fugitive felon policy.

### What are the Terms of the Proposed Settlement?

THIS IS A SUMMARY OF THE PROPOSED AGREEMENT. TO UNDERSTAND IT FULLY, YOU SHOULD READ THE ENTIRE AGREEMENT. The following description summarizes the key points in the proposed settlement agreement. You can read the entire proposed settlement agreement at SSA's website, at [[www.socialsecurity.gov/---](http://www.socialsecurity.gov/---)] and on the website of the National Senior Citizens Law Center at [[www.nslc.org/---](http://www.nslc.org/---)].

**April 1, 2009 Change in SSA Policy.** Effective April 1, 2009, SSA changed its policy. SSA will suspend or deny benefits based on outstanding felony arrest warrants for only the crimes of flight to avoid prosecution or confinement, escape from custody, and flight-escape. SSA will also apply the new policy when it considers a person's request to serve as a representative payee. SSA may still use warrant information when it decides whether or not a person is suitable to serve as a representative payee.

**Benefits for "Post-2006" Settlement Class Members.** For Settlement Class Members whose benefits were suspended or denied or had an administrative appeal determination on or after January 1, 2007, or who had administrative claims challenging the suspension of their benefits pending on August 11, 2008, SSA will reinstate benefits and pay benefits that it withheld back to the first month of the Class Member's suspension. SSA will also repay any sums that it collected because it found that the Class Member had been overpaid benefits under the previous policy. SSA will also reinstate benefits for Class Members who get SSI, but it will also redetermine the Class Member's non-medical eligibility criteria under its usual policies. After it reinstates benefits or payments to Settlement Class Members, SSA may do continuing disability reviews under its usual policies. SSA will notify Post-2006 Settlement Class Members at the time it takes these actions with individual notices mailed to the address on SSA records.

**Benefits for "Pre-2007" Settlement Class Members.** For Settlement Class Members whose benefits were suspended or denied between January 1, 2000 and December 31, 2006, and who did not have live administrative claims on August 11, 2008, SSA will stop collecting overpayments and will remove any remaining overpayment balance based on the previous policy. SSA will notify Pre-2007 Settlement Class Members of the settlement by a mailing to the address in SSA's records. For Class Members who were not receiving benefits as of April 1, 2009, the notice will advise that they may file a new application for benefits. If they do so within six months from the date of their notices, SSA will use an application date of April 1, 2009 as the protective filing date in reviewing the claim.

Class Members whose benefits were suspended or denied prior to January 1, 2000 may reapply under the new policy, but will not receive a mailed notice or a protective filing date.

**Release of Claims.** Class Members will agree to release all claims relating to the subject matter of this case that could have been asserted in the *Martinez* complaint against SSA.

**When Will Relief Be Provided?**

The Court must first finally approve the settlement. After final approval, SSA will begin steps to fulfill the terms of the settlement. Due to the size and complexity of the settlement, SSA requires some time to complete the terms. Currently, SSA plans to provide relief in phases, which are expected to conclude at the end of 2010. This timeframe is subject to change.

Do not contact SSA about reinstatement of benefits or overpayment relief provided by this settlement. SSA will notify individuals affected by the settlement after final court approval.

**What if I Object to or Have Questions About The Proposed Settlement?**

IF YOU AGREE with the proposed settlement, you do not need to do anything at this time. If you wish to attend, you may be present at the public hearing on the proposed settlement as stated above.

IF YOU DISAGREE with the proposed settlement, you have a right to object to it. Your objections will be considered by the Court as it reviews the settlement **ONLY IF** you follow these procedures. **You must submit objections in writing to the Court at the address above. Your objections must be received by September 10, 2009.**

ALL OBJECTIONS MUST CONTAIN THE FOLLOWING INFORMATION:

- a) Name, address, and telephone number of the person filing the objection.
- b) A statement of the reasons for the objection.
- c) A statement that copies of the objections have also been sent to the attorneys listed at the end of this notice.

Because this is a mandatory class under Federal Rule of Civil Procedure 23(b)(2), individual Settlement Class Members cannot exclude themselves from the Settlement Class.

If you have any questions about the lawsuit or the tentative settlement, please call the National Senior Citizens Law Center 510-663-1055 ext. 301.

**Attorneys' Names and Addresses for Plaintiffs and Defendant**

**For the Plaintiffs:**

Gerald A. McIntyre  
National Senior Citizens Law Center  
3435 Wilshire Boulevard, Suite 2860  
Los Angeles, CA 90010-1938  
Telephone: (213) 674-2900  
Fax: (213) 639-0934

**For the Defendant:**

Victoria R. Carradero  
Assistant United States Attorney  
450 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102-3495  
Telephone: (415) 436-7000  
Fax: (415) 436-6748