

COPY

DAVID H. FRY (SBN 189276)  
David.Fry@mto.com  
MUNGER, TOLLES & OLSON LLP  
560 Mission Street, 27th Floor  
Twenty-Seventh Floor  
San Francisco, CA 94105-2907  
Tel.: (415) 512-4000  
Fax: (415) 512-4077

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

ANNA RICH (SBN 230195)  
arich@nslc.org  
KEVIN PRINDIVILLE (SBN 235835)  
kprindiville@nslc.org  
NATIONAL SENIOR CITIZENS LAW CENTER  
1330 Broadway, Suite 525  
Oakland, CA 94612  
Tel.: (510) 663-1055  
Fax: (510) 663-1051

Attorneys for Plaintiffs,  
ROSA MARTINEZ, JIMMY HOWARD and all others  
similarly situated

Additional counsel listed on signature page

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ROSA MARTINEZ and JIMMY  
HOWARD, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

MICHAEL J. ASTRUE, Commissioner of  
Social Security,

Defendant.

CASE NO.

CLASS ACTION COMPLAINT

CLASS ACTION COMPLAINT:  
CASE NO.

1           Plaintiffs, through their attorneys, bring this action on behalf of themselves and all  
2 others similarly situated. On personal knowledge as to themselves and their activities, and on  
3 information and belief as to all other matters, Plaintiffs hereby allege as follows:

#### 4                                   **NATURE OF THE ACTION**

5           1.     Plaintiffs bring this class action to challenge Defendant Commissioner Michael J.  
6 Astrue's (the "Commissioner") unlawful policy of suspending or denying Old Age, Survivors,  
7 and Disability Insurance ("OASDI"), Supplemental Security Income ("SSI") and Special  
8 Veterans Benefits ("SVB") benefits, and of refusing to certify payments to an individual as a  
9 representative payee in these three benefit programs, on the basis of nothing more than the  
10 existence of an outstanding felony arrest warrant for that person or for a person sharing the same  
11 first and last name and Social Security Number ("SSN") or date of birth. The Commissioner  
12 lacks any statutory authority for this policy. The provisions under which he purports to act, by  
13 their express language, apply only when an individual is "fleeing to avoid prosecution, or custody  
14 or confinement after conviction" for a felony. This language requires a finding of an *intent* to flee  
15 for the specific purpose of avoiding prosecution. The Commissioner's misapplication of a  
16 narrowly targeted statute has resulted in needless destitution for countless thousands of the most  
17 vulnerable people in America — the elderly and the disabled — a majority of whom frequently  
18 rely on these benefits for most, if not all, of their income. Some have also lost Medicaid coverage  
19 associated with their SSI eligibility and others have lost their Medicare Part B coverage because  
20 they were no longer able to pay the premium which had previously been taken out of their  
21 monthly OASDI benefit.

22           2.     With this class action, Plaintiffs Rosa Martinez and Jimmy Howard seek  
23 declaratory and injunctive relief — or, in the alternative, a writ of mandamus — on behalf of  
24 themselves and all others similarly situated, against the SSA's unlawful policy of suspending  
25 benefits based solely on the existence of an outstanding warrant.

#### 26                                   **JURISDICTION AND VENUE**

27           3.     Jurisdiction in this Court is proper because Plaintiffs' claims arise under the laws of  
28 the United States. 28 U.S.C. § 1331. Specifically, this Court has jurisdiction over the subject

1 matter of this lawsuit pursuant to 42 U.S.C. §§ 405(g), 1009(b), 1383(c)(3), as well as 28 U.S.C.  
2 § 1361.

3 4. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C.  
4 § 405(g) because at least one named plaintiff resides within the Northern District of California.

5 5. Intradistrict Assignment: Pursuant to Civil Local Rules 3-2(c), 3-2(d), and 3-5(b),  
6 this action is properly assigned to the San Francisco Division because Plaintiff Rosa Martinez  
7 resides in San Mateo County and a substantial part of the events or omissions that gave rise to the  
8 claims occurred in that county.

### 9 PARTIES

10 6. Plaintiff Rosa Martinez resides in Redwood City, San Mateo County, California  
11 and had been receiving SSI Disability benefits since November 2005. Those benefits were  
12 suspended on October 1, 2008.

13 7. Plaintiff Jimmy Howard is 19 years old, resides in Santa Maria, California and  
14 received SSI disability benefits until his benefits were suspended in November 2006. Earlier this  
15 year, he applied to have his SSI benefits reinstated and was denied.

16 8. Defendant Michael J. Astrue is the Commissioner of Social Security. As such, he  
17 is charged with administering and supervising all benefit programs administered by the SSA  
18 nationwide, including OASDI, SSI and SVB. The Commissioner is sued in his capacity as the  
19 official charged with performing the statutory and regulatory duties of the SSA and with  
20 supervisory responsibility over the SSA and its divisions, agents, employees and representatives.

### 21 LEGAL FRAMEWORK

22 9. Effective August 22, 1996, the Personal Responsibility and Work Opportunity  
23 Reconciliation Act ("PRWORA"), Pub. L. No. 104-193, 42 U.S.C. § 1382(e)(4), amended the  
24 Social Security Act ("the Act") to authorize the SSA to suspend or deny SSI benefits to  
25 individuals fleeing to avoid prosecution or custody or confinement after conviction for a felony.

26 10. The PRWORA provides, in relevant part:

27 (4)(A) No person shall be considered an eligible individual or  
28 eligible spouse for purposes of this subchapter with respect to any  
month if during such month the person is—

1 (i) fleeing to avoid prosecution, or custody or confinement after  
2 conviction, under the laws of the place from which the person flees,  
3 for a crime, or an attempt to commit a crime, which is a felony  
4 under the laws of the place from which the person flees, or, in  
jurisdictions that do not define crimes as felonies, is punishable by  
death or imprisonment for a term exceeding 1 year regardless of the  
actual sentence imposed...

5 42 U.S.C. § 1382(e).

6 11. In 1999, Congress authorized the Special Veterans Benefits ("SVB") Program to  
7 provide an SSI-like benefit for certain World War II veterans residing outside the United States.  
8 Congress also extended the provisions of 42 U.S.C. § 1382(e)(4)(A)(i) to the SVB program,  
9 except that the SVB provision applies only to felony charges within the United States while the  
10 SSI provision applies to felony charges anywhere in the world. 42 U.S.C. § 1004(a)(2).

11 12. Effective in 2005, the Social Security Protection Act of 2004, Pub. L. No. 108-203,  
12 ("SSPA") extended to the SSA's largest program, OASDI, the same provision prohibiting  
13 payment of benefits to individuals who are "fleeing to avoid prosecution, or custody or  
14 confinement after conviction" for a felony.<sup>1</sup> 42 U.S.C. § 402(x)(1)(A)(iv).

15 13. The same legislation prohibited the certification of payment of benefits to a person  
16 as representative payee for OASDI, SSI or SVB benefits if that person is "fleeing to avoid  
17 prosecution, or custody or confinement after conviction" for a felony. 42 U.S.C. §§  
18 405(j)(2)(C)(i)(V), 1007(d)(1)(E), 1383(a)(2)(B)(iii)(V).

19 14. In 2000, the SSA promulgated final regulations to implement the statutory  
20 provision in the SSI program. 20 C.F.R. § 416.1339(b). Those regulations provide that the  
21 suspension of benefits:

22 is effective with the first day of whichever of the following months  
23 is earlier — (i) The month in which a warrant or order ... is issued  
24 by a court or other duly authorized tribunal on the basis of an  
25 appropriate *finding* that the individual — (A) Is fleeing, or has fled,  
to avoid prosecution . . . ; (B) Is fleeing, or has fled, to avoid  
26 custody or confinement after conviction . . . ; or (ii) The first month  
27 during which the individual fled to avoid such prosecution, fled to  
28

<sup>1</sup> The OASDI provision, like the SSI provision, applies to prosecutions anywhere in the world.

1                   avoid such custody or confinement . . . if indicated in such warrant  
2                   or order, or in a decision by a court or other appropriate tribunal.

3   20 C.F.R. § 416.1339(b) (emphasis added).

4           15.   In 2003, the SSA promulgated final regulations to implement the statutory  
5   provision in the SVB program. 20 C.F.R. § 408.810(b). These regulations are essentially the  
6   same as the SSI regulations.

7           16.   There are no implementing regulations for §§ 42 U.S.C. §§ 402(x)(1)(A)(iv),  
8   405(j)(2)(C)(i)(V), 1007(d)(1)(E), and 1383(a)(2)(B)(iii)(V).

9                                   **SSA POLICY AND PRACTICE**

10          17.   Despite the plain language of the statute, and despite repeated and consistent  
11   rulings to the contrary, the SSA continues to interpret the Act to mean that a person is “fleeing to  
12   avoid prosecution, custody, or confinement” when there is an outstanding arrest warrant issued in  
13   his or her name, even if there is no finding of “flight” undertaken with the specific intent to avoid  
14   prosecution and, indeed, even if that person is unaware of the outstanding arrest warrant or the  
15   pending charges.

16          18.   This interpretation has been challenged by individual SSI recipients in at least eight  
17   cases brought in federal district courts in California, Maine, Michigan, Minnesota, New York,  
18   Oregon and Tennessee. In each of these cases — save one — the courts ruled that the SSA’s  
19   interpretation of the PRWORA was unlawful and either restored benefits to the beneficiaries or  
20   otherwise instructed the SSA to comply with the courts’ rulings.<sup>2</sup> In order to avoid adverse  
21   precedent, however, the SSA chose in each case not to appeal the district court’s decision.

22          19.   The one case in which the SSA prevailed on this issue at the district-court level  
23   involved a case filed *pro se* in New York. *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005). In

24  
25   <sup>2</sup> While there may be cases that are unreported, a Westlaw search has identified only one instance  
26   in which a court has upheld a denial of benefits based on the SSA’s policy, and that decision was  
27   overturned on appeal in the only appellate decision on the issue to date. *Fowlkes v. Adamec*, 432  
28   F.3d 90, 96-97 (2d Cir. 2005). Numerous decisions have found the SSA’s policy to be contrary  
to the statute and the regulations. *See, e.g., id.*; *Reff v. Astrue*, 2008 WL 4277713 (D. Minn. Sept.  
15, 2008); *Caldwell v. Astrue*, 2008 WL 2713714 (E.D. Tenn. July 10, 2008); *Blakely v.*  
*Comm’n Soc. Sec.*, 330 F.Supp.2d 910 (W.D. Mich. 2004); *Hull v. Barnhart*, 336 F.Supp.2d  
1113 (D. Or. 2004); *Thomas v. Barnhart*, 2004 WL 1529280 (D. Me. June 24, 2004); *Garnes v.*  
*Barnhart*, 352 F.Supp.2d 1059 (N.D. Cal. 2004).

1 that case, the district court ruled against the plaintiff and the plaintiff appealed, creating the first  
2 — and, to date, the only — opportunity for an appellate court to address the issue. The United  
3 States Court of Appeals for the Second Circuit found that “the plain language of the statute and its  
4 implementing regulation” preclude the SSA from determining that a person is “fleeing to avoid  
5 prosecution” based solely on the fact that there is an outstanding warrant for a person’s arrest. *Id.*  
6 at 96. Rather, there must be a “conscious evasion of arrest or prosecution.” *Id.* “[B]enefits may  
7 be suspended only as of the date of a warrant or order issued by a court or other authorized  
8 tribunal *on the basis of a finding that an individual has fled or was fleeing from justice*” and a  
9 person’s flight must be “undertaken with a specific intent, i.e., to avoid prosecution.” *Id.* at 96-97  
10 (emphasis added).

11 20. In an SSA Acquiescence Ruling following the *Fowlkes* decision, the SSA  
12 acknowledged that the Second Circuit had “determined that for ‘flight’ to result in a suspension of  
13 benefits, it must be undertaken with the specific intent to avoid prosecution.” SSA Acquiescence  
14 Ruling 06-1(2), Apr. 6, 2006, *available at* [http://www.ssa.gov/OP\\_Home/rulings/ar/02/AR2006-](http://www.ssa.gov/OP_Home/rulings/ar/02/AR2006-01-ar-02.html)  
15 [01-ar-02.html](http://www.ssa.gov/OP_Home/rulings/ar/02/AR2006-01-ar-02.html). The SSA nevertheless has flouted that finding and the Second Circuit’s further  
16 recognition that the determination of “flight” must be made by the court issuing the warrant,  
17 requiring only that “the Agency . . . have some evidence that the individual knew his  
18 apprehension was sought.” Moreover, the SSA applies even this insufficient requirement only in  
19 the three states comprising the Second Circuit.

20 21. Despite the Second Circuit’s ruling, and the agency’s acknowledgement of it, the  
21 SSA continues to apply an unlawful interpretation of these statutory provisions, resulting in the  
22 suspension or denial of benefits — and the threatened suspension and denial of benefits — to  
23 thousands of eligible recipients of and applicants for SSI, SVB and OASDI benefits and results in  
24 the denial or removal of certification as representative payees of countless numbers of individuals  
25 seeking to serve as representative payee for a friend or family member.

#### 26 SSA’S APPLICATION OF ITS POLICY

27 22. The SSA implements this policy through a computer matching program which  
28 compares SSA’s databases with various federal, state, and local warrant databases.

23. The SSA treats a warrant as having been issued to a particular benefits recipient if the databases match the person's first and last names and either (i) his or her social security number or (ii) his or her date of birth.

## CLASS ACTION ALLEGATIONS

24. Plaintiffs bring this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

25. The class consists of:

All persons whose SSI, SVB or OASDI benefits have been suspended or denied, or who are threatened with the suspension or denial of such benefits, for allegedly "fleeing to avoid prosecution, or custody or confinement after conviction" for a felony or who are not permitted to serve as representative payees for SSI, SVB or OASDI benefits for allegedly "fleeing to avoid prosecution, or custody or confinement after conviction" for a felony.

26. The class is so numerous that joinder of all members is impracticable. While the exact number of class members can only be obtained through appropriate discovery, on information and belief, there are over one hundred thousand class members.

27. There are questions of law and fact common to all class members that predominate over questions only affecting individual class members. Such questions include, among others: (a) whether the SSA can determine that an individual is “fleeing to avoid prosecution, or custody or confinement after conviction” for a felony under 42 U.S.C. §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V), 1004(a)(2), 1007(d)(1)(E), 1382(e)(4)(A) or 1383(a)(2)(B)(iii)(V), absent a finding that the individual had the intent to flee for the specific purpose of either avoiding prosecution for a felony or avoiding custody or confinement after conviction of a felony and that the individual had the capacity to form such an intent; and (b) whether the Commissioner has engaged in a pattern of suspending or denying class members’ benefits and denying or revoking certification as a representative payee for allegedly “fleeing to avoid prosecution, or custody or confinement after conviction” for a felony without first making a finding as to the individual’s intent and capacity to form such intent.

28. Plaintiffs' claims are typical of the claims of all class members, and arise from the same course of conduct by the Commissioner. The declaratory and injunctive relief sought is

1 common to all class members. In addition, the Commissioner has acted and continues to act on  
2 grounds generally applicable to all class members, thereby making injunctive and declaratory  
3 relief appropriate to the class as a whole.

4 29. A class action is superior to other available methods for a fair and efficient  
5 adjudication of this matter in that the prosecution of separate actions by individual class members  
6 would unduly burden the Court and create the possibility of conflicting decisions.

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

8 31. The named plaintiffs and the proposed class are represented by Munger, Tolles &  
9 Olson LLC, National Senior Citizens Law Center, Urban Justice Center, and Disability Rights  
10 California, whose attorneys are experienced in class action litigation and will adequately  
11 represent the class.

#### 12 INDIVIDUAL PLAINTIFF ALLEGATIONS

##### 13 Plaintiff Rosa Martinez

14 32. After working for a number of years as a nursing assistant and in retail sales,  
15 Plaintiff Rosa Martinez began receiving SSI disability benefits in November 2005. She suffers  
16 from Sharp's syndrome (a form of mixed connective tissue disease), fibromyalgia, hepatitis,  
17 depression, diabetes and sleep apnea and is no longer able to work. Her SSI benefit of \$870 per  
18 month is Ms. Martinez's only source of income. Without it she would be unable to pay for her  
19 basic living expenses.

20 33. On December 10, 2007, an SSA employee handed Ms. Martinez a letter (attached  
21 hereto as Exhibit A) stating that the agency would be suspending her SSI benefits effective  
22 January 2008 because "the law prohibits us from paying Supplemental Security Income to  
23 persons who have an outstanding arrest warrant for a crime which is a felony." The notice went  
24 on to state that there was an outstanding arrest warrant for a felony drug crime issued in her name  
25 by the Miami Dade Police Department in Florida on July 14, 1980. Ms. Martinez explained that  
26 she had never been to Miami and had never been arrested or charged with a crime and that this  
27 had to be a mistake. The SSA claims representative told Ms. Martinez that this could not be  
28

1 appealed and refused to give her an appeal form and told her she would simply have to get proof  
2 that there was no warrant.

3 34. Ms. Martinez obtained an SSA appeal form at the Legal Aid Society of San Mateo  
4 County ("Legal Aid") and on December 11, 2007, the day after she received notice of the  
5 proposed suspension, Ms. Martinez filed a Request for Reconsideration at the local SSA office to  
6 appeal the proposed suspension (attached hereto as Exhibit B). In the reconsideration request she  
7 stated, "I have never been in Miami Dade," and requested that the reconsideration be by means of  
8 a formal conference. SSA regulations require that she be afforded the opportunity for a formal  
9 conference where she would have the right to confront adverse witnesses and request that  
10 subpoenas be issued for relevant evidence and witnesses. 20 C.F.R. § 416.1413(c).

11 35. On the very same day, SSA issued a Notice of Reconsideration affirming the initial  
12 determination (attached hereto as Exhibit C). The notice stated, "In order for Social Security to  
13 reinstate your benefits you must provide the original document which lists The Warrant Number,  
14 The issuing agency/county, and the date the warrant was rescinded or satisfied. If you believe the  
15 warrant was issued in error, Social Security must have an original document that states the  
16 warrant was issued in error and does not pertain to you at all. It must state the date the warrant  
17 was rescinded. This is the only way this case can be resolved."

18 36. On December 19, 2007, Ms. Martinez filed a request for an administrative law  
19 judge hearing.

20 37. Ms. Martinez did not receive her scheduled SSI benefits at the beginning of January  
21 and February, 2008. As a result she was left without any income and managed to get by only  
22 with loans from her brother and friends. It was only through the intervention of U.S.  
23 Representative Anna Eshoo that her benefits were restored later in February.

24 38. On April 15, 2008, the SSA sent Ms. Martinez another notice similar to the  
25 December notice stating that they planned to stop her SSI payments beginning in May 2008.  
26 Attorney Christopher Douglas of the Legal Aid Society of San Mateo County requested  
27 reconsideration of this determination within the ten-day period for receiving continued benefits  
28 and requested that the appeal be by means of a formal conference.

1           39. Nonetheless, the SSA suspended Ms. Martinez's benefits on May 1, 2008. On May  
2   5, 2008, Ms. Martinez and her attorney went to the Redwood City SSA office to demand that she  
3   receive her SSI benefits for May and that she be given a formal conference prior to suspension of  
4   her benefits. After considerable dispute as to whether she had a right to a formal conference or  
5   whether witnesses could be subpoenaed, the claims representative spoke with her supervisor and  
6   agreed that Ms. Martinez had not received due process and agreed to issue the SSI payment for  
7   May. The SSA representative reiterated that Ms. Martinez needed to provide a statement on the  
8   letterhead of Miami Dade County to the effect that plaintiff was not the person they were seeking.

9           40. No formal conference was ever scheduled or held and no Administrative Law Judge  
10   hearing was ever scheduled or held.

11          41. The SSA sent a Notice of Reconsideration dated August 25, 2008 in response to the  
12   December 11, 2007 appeal denying her request for reconsideration and suspending her benefits  
13   effective November 1, 2005. The notice stated that Ms. Martinez had failed to provide evidence  
14   that she was not the Rosa Martinez who was wanted in Miami. This was followed by a Notice of  
15   overpayment dated September 2, 2008 stating that she had been overpaid in the amount of  
16   \$27,365.50 and demanding that she repay that amount.

17          42. Ms. Martinez did not receive her SSI benefits for October 2008. Her SSI payment  
18   of \$870 per month has been her only source of income and she now has no income and no savings  
19   to meet her basic needs.

20          43. Ms. Martinez also suffered, and continues to suffer, significant stress and anxiety as  
21   the result of the repeated threats to suspend, and the actual suspensions, of her SSI benefits.  
22   Since first receiving notice of the suspension of her benefits, she has suffered a deepening  
23   depression. She has also had trouble sleeping and her appetite has decreased, causing her to lose  
24   weight.

25          44. Ms. Martinez has never been to Miami Dade County and was living with her father  
26   in Chicago, Illinois at the time the warrant was issued, while her husband, Gregg Sharp, was in  
27   basic training for the United States Army. She used her husband's name at the time and was  
28

1 known as Rosa M. Sharp. She continued to use that name — even after her divorce — until she  
2 became a United States citizen in 2000.

3 **Plaintiff Jimmy Howard**

4 45. Plaintiff Jimmy Howard is 19 years old and resides in Santa Maria, California,  
5 where he lives in a group home for individuals with developmental disabilities. Mr. Howard has  
6 been diagnosed with mental retardation and other mental impairments.

7 46. Mr. Howard received SSI benefits as a child based on his disabilities. He is a client  
8 of the Tri-Counties Regional Center ("TCRC"), which contracts with the State of California to  
9 provide services to children and adults with developmental disabilities. Because he was a minor  
10 at the time and could not manage his own funds, TCRC served as his representative payee and  
11 received all payments and communications on his behalf.

12 47. In a notice dated October 17, 2006, the SSA notified TCRC that Mr. Howard's  
13 benefits would be suspended because of a 2001 arrest warrant from Butler County, Ohio,  
14 stemming from an assault charge. The notice went on to say, "The law prohibits us from paying  
15 Social Security benefits to individuals who have an outstanding arrest warrant for a crime which  
16 is a felony." The notice also stated that he needed to pay back an overpayment of \$26,826 within  
17 30 days. The notice made no mention of the right to continuation of benefits pending appeal and  
18 made no mention of the right to a formal conference or an informal conference if the payee chose  
19 to appeal on his behalf. Mr. Howard did not receive a copy of the notice. TCRC did not appeal  
20 and his benefits ceased as of November 2006.

21 48. After Mr. Howard turned 18, he was referred to Katherine Mottarella, an attorney  
22 with the Office of Clients Rights Advocacy in Santa Barbara. Ms. Mottarella proceeded to gather  
23 information with respect to the charges and related events in Ohio. On October 22, 2007, Ms.  
24 Mottarella filed a request for reconsideration of the suspension together with a request that the  
25 SSA find good cause for missing the 60 day deadline for appeal pursuant to 20 C.F.R. § 416.1411  
26 based on Mr. Howard's mental limitations and the misstatement of the law in the October 2006  
27 notice.

1           49.    On March 7, 2008, Mr. Neil Ohlenkamp, the District Manager of the SSA office in  
2 Santa Barbara sent Ms. Mottarella a letter stating that the request for reconsideration was not  
3 timely and that good cause for late filing had not been established. The letter contained no notice  
4 of appeal rights.

5           50.    On May 1, 2008, attorney Mottarella filed a request for an administrative law judge  
6 hearing to review the March 2008 determination. No hearing has yet been scheduled

7           51.    On March 31, 2008, Mr. Howard, with the assistance of Ms. Mottarella, filed a new  
8 SSI application which was denied in a notice dated June 18, 2008 stating "We cannot pay you SSI  
9 payments for March 2008 on because the law prohibits us from paying Supplemental Security  
10 Income to individuals who have an outstanding arrest warrant for a felony."

11          52.    A request for reconsideration of the denial was filed on July 20, 2008, stating as the  
12 reason for appeal: "I was not fleeing from Ohio. My mother took me to California." So far there  
13 has been no response to this request for reconsideration.

14          53.    At the time of the charges in this case, Mr. Howard was twelve years old and living  
15 with his family in a trailer park in Butler County, Ohio, having been brought there recently by his  
16 mother and stepfather to be with the stepfather's family. He did not get along with the stepfather.  
17 According to the records of the Butler County Juvenile Court, Mr. Howard was reported as a  
18 possible runaway and was found at a food market on September 23, 2001. He was charged as a  
19 delinquent under Ohio law for acts that would constitute criminal damaging, theft and breaking  
20 and entering. According to a complaint filed in Juvenile Court, on September 25, 2001, while he  
21 was being held at the detention center, "Howard kicked staff member Joyana Randolph while he  
22 was being mechanically restrained." The court records state that at the time of this event he was  
23 four feet seven inches tall and weighed 85 pounds. He was once again charged as a delinquent  
24 child, this time for an assault. It would be a felony under Ohio law if it were committed by an  
25 adult, but not when the alleged wrongdoer is a twelve-year-old.

26          54.    On October 1, 2001, Mr. Howard appeared in Juvenile Court and was ordered  
27 released from detention and a competency evaluation was ordered to determine his ability to  
28 assist with his defense. Sometime between that appearance and November 16, 2001, Mr.

1 Howard's mother broke up with his stepfather and moved to California, taking her twelve-year-  
2 old son with her. Mr. Howard did not appear in court on November 16, 2001, and a bench  
3 warrant was issued.

4 55. TCRC has been paying the cost of Mr. Howard's group home with funds from the  
5 California Medi-Cal program. However, Mr. Howard has been showing considerable progress  
6 lately and has been successfully working in a supported employment program. He appears to be  
7 ready to move to a more independent living environment, but is financially unable to do so  
8 without his SSI benefits.

### 9 FIRST CAUSE OF ACTION

#### 10 FOR DECLARATORY AND INJUNCTIVE RELIEF FOR 11 VIOLATION OF THE SOCIAL SECURITY ACT AND ITS IMPLEMENTING REGULATIONS

12 56. Paragraphs 1-53 are each re-alleged and incorporated as if fully set forth herein.

13 57. The Social Security Act and the regulations promulgated thereunder, 42 U.S.C. §§  
14 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V), 1004(a)(2), 1007(d)(1)(E), 1382(e)(4)(A)(i),  
15 1383(a)(2)(B)(iii)(V) and 20 C.F.R. § 416.1339(b), prohibit the Commissioner from suspending  
16 or denying benefits or refusing to certify an individual as a representative payee for allegedly  
17 fleeing to avoid felony prosecution, or custody or confinement after conviction of a felony, on the  
18 basis of an outstanding arrest warrant without a finding by a court that the claimant is "fleeing"  
19 with the specific intent to avoid prosecution, custody, or confinement.

20 58. By failing to make such a finding, the Commissioner has acted and continues to act  
21 in violation of the Social Security Act and the regulations promulgated thereunder.

### 22 SECOND CAUSE OF ACTION

#### 23 MANDAMUS

24 59. Paragraphs 1-56 are each re-alleged and incorporated as if fully set forth herein.

25 60. The Commissioner has a non-discretionary statutory obligation to make benefit  
26 determinations in accordance with the Social Security Act, as amended, and its implementing  
27 regulations. Among other things, the Commissioner is required to award benefits to applicants  
28 who are qualified under the governing statutory provisions and regulations. In the event that

1 Plaintiffs do not otherwise have an adequate legal remedy, mandamus should issue compelling  
2 the Commissioner immediately to: (1) cease denying or suspending benefits or denying  
3 certifications as representative payees under 42 U.S.C. §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V),  
4 1004(a)(2), 1007(d)(1)(E), 1382(e)(4)(A) and 1383(a)(2)(B)(iii)(V), without first determining that  
5 the individual was fleeing with the specific intent to avoid prosecution or custody or confinement  
6 after conviction for a felony; and (2) vacate all prior such suspensions and denials of benefits or  
7 denials of certification as representative payee, in which there was no prior determination that the  
8 individual was fleeing with the specific intent of avoiding prosecution or custody or confine for a  
9 felony.

#### 10 PRAYER FOR RELIEF

11 61. WHEREFORE Plaintiffs respectfully request that the Court:

- 12 a. Assume jurisdiction over this matter;
- 13 b. Certify this action as a class action;
- 14 c. Declare that Defendant's interpretation and implementation of 42 U.S.C.  
15 §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V), 1004(a)(2),  
16 1007(d)(1)(E), 1382(e)(4)(A) and 1383(a)(2)(B)(iii)(V) are unlawful;
- 17 d. Preliminarily and permanently enjoin the Commissioner from continuing to  
18 implement 42 U.S.C. §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V), 1004(a)(2),  
19 1007(d)(1)(E), 1382(e)(4)(A) and 1383(a)(2)(B)(iii)(V) in a manner  
20 inconsistent with the law;
- 21 e. Preliminarily and permanently enjoin the Commissioner from making  
22 determinations to suspend or deny SSI, SVB and OASDI benefits or to deny  
23 certification as a representative payee for such benefits pursuant to 42 U.S.C.  
24 §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V), 1004(a)(2), 1007(d)(1)(E),  
25 1382(e)(4)(A) and 1383(a)(2)(B)(iii)(V), based solely upon the existence of  
26 an arrest warrant and absent a finding that an individual is fleeing with the  
27 specific intent to avoid prosecution or custody or confinement after  
28 conviction for a felony;

- 1 f. Preliminarily and permanently enjoin the Commissioner immediately to  
2 redetermine and re-adjudicate all determinations to suspend or deny SSI,  
3 SVB, and OASDI benefits and all determinations to deny certification as  
4 representative payee for such benefits made pursuant to 42 U.S.C.  
5 §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V), 1004(a)(2), 1007(d)(1)(E),  
6 1382(e)(4)(A) and 1383(a)(2)(B)(iii)(V), and to reverse all such  
7 determinations unless made on the basis of a finding by a court that the  
8 individual was fleeing with the specific intent to avoid prosecution or custody  
9 or confinement after conviction for a felony;
- 10 g. Issue a writ of mandamus compelling the Commissioner immediately to: (1)  
11 cease denying or suspending benefits or denying certifications as  
12 representative payees under 42 U.S.C. §§ 402(x)(1)(A)(iv),  
13 405(j)(2)(C)(i)(V), 1004(a)(2), 1007(d)(1)(E), 1382(e)(4)(A) and  
14 1383(a)(2)(B)(iii)(V), without first determining that the individual was  
15 fleeing with the specific intent to avoid prosecution or custody or  
16 confinement after conviction for a felony, and (2) vacate all prior such  
17 suspensions and denials of benefits and denials of certification as  
18 representative payee, in which there was no prior determination that the  
19 individual was fleeing with the specific intent of avoiding prosecution or  
20 custody or confine for a felony;
- 21 h. Award Plaintiffs costs, disbursements, and reasonable attorneys' fees,  
22 including, without limitation, the costs and fees authorized by 28 U.S.C.  
23 § 2412;

1 i. Grant Plaintiffs such other and further relief as the Court may find just,  
2 proper, and equitable.

3  
4 DATED: October 15, 2008

MUNGER, TOLLES & OLSON LLP  
DAVID H. FRY

5  
6 By: 

7 DAVID H. FRY

8 Of Counsel:

9 WILLIAM G. LIENHARD  
10 wlienhard@urbanjustice.org  
11 EMILIA SICILIA  
12 esicilia@urbanjustice.org  
13 JENNIFER PARISH  
14 jparish@urbanjustice.org  
15 URBAN JUSTICE CENTER  
16 123 William Street, 16th Fl.  
17 New York, NY 10038  
18 Tel.: (646) 602-5668  
19 Fax: (212) 533-4598

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

20  
21  
22  
23  
24  
25  
26  
27  
28  
MARILYN HOLLE (SBN 61530)  
marilyn.holle@disabilityrightsca.org  
DISABILITY RIGHTS CALIFORNIA  
3580 Wilshire Blvd. Suite 902  
Los Angeles, CA 90010-2522  
Tel: (213) 427-8747  
Fax: (213) 427-8767

# EXHIBIT A

**Social Security Administration  
Supplemental Security Income  
Notice of Planned Action**

VBFF M1

SOCIAL SECURITY  
601 ALLERTON ST 2ND FL  
REDWOOD CITY CA 94063  
Claim Number: Redacted  
December 10, 2007

ROSA MARTINEZ  
334 REDWOOD AVE  
APT 5  
REDWOOD CITY CA 94061

We are writing to tell you about changes in your Supplemental Security Income (SSI) payments. The following chart shows the SSI money due you for the months we changed. As you can see from the chart, we are changing your payments for past and future months. The rest of this letter will tell you more about this change.

**Your Payments Will Be Changed As Follows**

From: November 2005 and continuing Amount Due: \$0.00

We will stop your payments beginning January 2008.

**Why Your Payments Changed**

We cannot pay you SSI payments for January 2008 and continuing because the law prohibits us from paying Supplemental Security Income to persons who have an outstanding arrest warrant for:

- a crime which is a felony (or, in jurisdictions that do not define crimes as felonies, a crime that is punishable by death or imprisonment for a term exceeding 1 year), or
- a violation of a condition of probation or parole under Federal or State law.

**Your Payment Is Based On These Facts**

- Our records show that the following warrant for your arrest was issued for a crime which is a felony:

Issued by: MIAMI DADE POLICE DEPARTMENT  
9105 NW 25TH ST  
DORAL, FL 33172  
(305) 471-2070

Date of warrant: July 14, 1980  
Type of crime: drug related

SEE NEXT PAGE

Originating case number: F80010900

National Crime Information Center number: W413016901

- Social Security cannot provide further information about the warrant. To satisfy the warrant or get more information about it, please contact directly the MIAMI DADE POLICE DEPARTMENT.

#### **If You Think Your SSI Should Be Paid**

Even if you have an outstanding arrest warrant, you have certain additional rights under the law. Your SSI can be paid if you can show us you have a good reason for not satisfying the outstanding warrant. Please see the enclosure "Information About SSI and Outstanding Arrest Warrants" at the end of this notice for what Social Security considers a good reason for not satisfying a warrant. This enclosure also tells you what to do if you think you have a good reason.

#### **Information About Medicaid**

For information about any change in your Medicaid eligibility caused by this action, you should get in touch with the local Social Services District Office.

#### **Things To Remember**

- We may be in touch with you later about any payments we previously made.
- This decision refers only to your claim for SSI payments.
- This determination replaces all previous determinations for the above periods.

#### **If You Disagree With The Decision**

If you disagree with the decision, you have the right to appeal. We will review your case and consider any new facts you have.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5 day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- To appeal, you must fill out a form called "Request For Reconsideration." The form number is SSA-561. To get

SEE NEXT PAGE

this form, contact one of our offices. We can help you fill out the form by telephone.

#### **Appeal In 10 Days To Keep Getting The Same Check**

If you appeal within 10 days, you will continue to get the same check amount until we decide your case.

- The 10 days start the day after you get this letter.
- If you lose your appeal, you might have to pay back some or all of this money.

However, even if you appeal in 10 days, we may stop the check in January 2008 as shown above if both of the following are true:

- Our new decision is the same as the one you appealed; and
- We send or give you a letter with our new decision in time to stop the check.

#### **How To Appeal**

There are three ways to appeal. You can pick the one you want. If you meet with us in person, it may help us decide your case.

**Case Review:** You have the right to review the facts in your file. You can give us more facts to add to your file. Then we will decide your case again. You will not meet with the person who decides your case.

**Informal Conference:** You will meet with the person who decides your case. You can tell that person why you think you are right. You can give us more facts to help prove you are right. You can bring other people to help explain your case.

**Formal Conference:** This is a meeting like an informal conference. The difference is we can make people come to prove you are right. We can make them bring important papers about your case, even if they do not want to help you. You can question these people at your meeting.

#### **If You Want Help With Your Appeal**

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

SEE NEXT PAGE

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due benefits to pay toward the fee.

**If You Have Any Questions**

For general information about SSI, visit our website at [www.socialsecurity.gov](http://www.socialsecurity.gov) on the Internet. You will find the law and regulations about SSI eligibility and SSI payment amounts at [www.socialsecurity.gov/SSIRules/](http://www.socialsecurity.gov/SSIRules/).

For general questions about SSI or specific questions about your case, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-650-363-2919. Our lines are busiest early in the week and early in the month, so if your business can wait, it's best to call at other times. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

601 ALLERTON ST 2ND FL  
REDWOOD CITY CA 94063

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

Peter D. Spencer  
Regional Commissioner  
San Francisco Region

Enclosure: Information About SSI and Outstanding Arrest  
Warrants

SEE NEXT PAGE

# EXHIBIT B

## REQUEST FOR RECONSIDERATION

(Do not write in this space)

|                                            |                                                                                    |
|--------------------------------------------|------------------------------------------------------------------------------------|
| NAME OF CLAIMANT<br><b>ROSA MARTINEZ</b>   | NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON (If different from claimant.)          |
| SOCIAL SECURITY CLAIM NUMBER<br>Redacted   | SUPPLEMENTAL SECURITY INCOME (SSI) OR SPECIAL VETERANS BENEFITS (SVB) CLAIM NUMBER |
| SPOUSE'S NAME (Complete ONLY in SSI cases) | SPOUSE'S SOCIAL SECURITY NUMBER (Complete ONLY in SSI cases)                       |

DEC 11 2007

CLAIM FOR (Specify type, e.g., retirement, disability, hospital insurance, SSI, SVB, etc.)

I do not agree with the determination made on the above claim and request reconsideration. My reasons are:

I have never been in MIAMI DADE. This is clearly case of stolen identity.

## SUPPLEMENTAL SECURITY INCOME OR SPECIAL VETERANS BENEFITS RECONSIDERATION ONLY

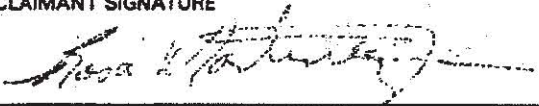
(See the three ways to appeal in the How To Appeal Your Supplemental Security Income (SSI) Or Special Veterans Benefit (SVB) Decision instructions.)

"I want to appeal your decision about my claim for Supplemental Security Income (SSI) or Special Veterans Benefits (SVB). I've read about the three ways to appeal. I've checked the box below."

☒ Case Review ☐ Informal Conference ☒ Formal Conference

## EITHER THE CLAIMANT OR REPRESENTATIVE SHOULD SIGN - ENTER ADDRESSES FOR BOTH

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

|                                                                                                           |             |                   |                                                                                                                           |       |          |
|-----------------------------------------------------------------------------------------------------------|-------------|-------------------|---------------------------------------------------------------------------------------------------------------------------|-------|----------|
| CLAIMANT SIGNATURE<br> |             |                   | SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE<br><input type="checkbox"/> NON-ATTORNEY <input type="checkbox"/> ATTORNEY |       |          |
| MAILING ADDRESS<br>334 Redwood Ave #5                                                                     |             |                   | MAILING ADDRESS                                                                                                           |       |          |
| CITY<br>Redwood                                                                                           | STATE<br>CA | ZIP CODE<br>94061 | CITY                                                                                                                      | STATE | ZIP CODE |
| TELEPHONE NUMBER (Include area code)<br>(650) 477-2045                                                    |             |                   | TELEPHONE NUMBER (Include area code)                                                                                      |       |          |
| DATE<br>12-11-07                                                                                          |             |                   | DATE                                                                                                                      |       |          |

## TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION

See list of initial determinations

- |                                                                                                                                                                                                                                       |                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1. HAS INITIAL DETERMINATION BEEN MADE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                           | 2. CLAIMANT INSISTS ON FILING <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3. IS THIS REQUEST FILED TIMELY?<br>(If "NO", attach claimant's explanation for delay and attach only pertinent letter, material, or information in social security office.) <input type="checkbox"/> YES <input type="checkbox"/> NO |                                                                                        |

RETIREMENT AND SURVIVORS RECONSIDERATIONS ONLY (CHECK ONE) REFER TO (GN 03102.125)

SOCIAL SECURITY OFFICE ADDRESS

- ☐ NO FURTHER DEVELOPMENT REQUIRED (GN 03102.300)  
☐ REQUIRED DEVELOPMENT ATTACHED  
☐ REQUIRED DEVELOPMENT PENDING, WILL FORWARD OR ADVISE STATUS WITHIN 30 DAYS

Social Security Administration  
601 Allerton Street, 2nd Floor  
Redwood City, CA 94063

ROUTING INSTRUCTIONS  
(CHECK ONE) 

- ☐ DISABILITY DETERMINATION SERVICES (ROUTE WITH DISABILITY FOLDER)  
☐ ODO, BALTIMORE

- ☐ PROGRAM SERVICE CENTER  
☐ OIO, BALTIMORE  
☐ OEO, BALTIMORE

- ☒ DISTRICT OFFICE RECONSIDERATION  
☐ CENTRAL PROCESSING SITE (SVB)

NOTE: Take or mail the signed original to your local Social Security office, the Veterans Affairs Regional Office in Manila or any U.S. Foreign Service post and keep a copy for your records.

# EXHIBIT C

**Social Security Administration  
Supplemental Security Income**

**Notice of Reconsideration**

SOCIAL SECURITY  
601 ALLERTON ST 2ND FL  
REDWOOD CITY, CA 94063  
Claim Number: Redacted  
December 11, 2007  
026

ROSA MARTINEZ  
334 REDWOOD AVE  
APT 5  
REDWOOD CITY CA 94061-3044

Dear ROSA MARTINEZ

Reconsideration Filed:  
December 11, 2007

You have requested that Social Security reinstate your Supplemental Security Income payments, but you have not provided the documentation needed. Social Security records indicate that Miami Dade Police Department in Doral Florida has a warrant for your arrest and the crime that the warrant was issued for is a felony. In order for Social Security to reinstate your benefits you must provide an original document which lists The Warrant Number, The issuing agency/county, and the date the warrant was rescinded or satisfied. If you believe the warrant was issued in error, Social Security must have an original document that states the warrant was issued in error and does not pertain to you at all. It must state the date the warrant was rescinded. This is the only way this case can be resolved.

**If You Disagree With The Decision**

If you disagree with this decision, you have the right to request a hearing. A person who has not seen your case before will look at it. That person is an Administrative Law Judge (ALJ). The ALJ will review your case again and look at any new facts you have before deciding your case.

- You have 60 days to ask for a hearing.
- The 60 days start the day after you receive this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason if you wait more than 60 days to ask for a hearing.

See Next Page

Redacted

Page 3 of 3

local Social Security office at 650-363-2919 and ask for Mrs. C. Soge. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY/TDD number 800-325-0778. If you do call or visit an office, please have this letter with you. It will help us answer your questions.

If you plan to visit an office you may call ahead to make an appointment. This will help us serve you more quickly.

*A. Stanfel*

A. Stanfel  
District Manager