

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
560 Mission Street, 27th Floor
5 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 Defendant.
27
28

CASE NO. 08-CV-4735 CW

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR SUMMARY
ADJUDICATION OF THE LEGALITY OF
DEFENDANT'S POLICY REGARDING
"FLEEING" BENEFICIARIES;
MEMORANDUM OF LAW IN SUPPORT
THEREOF**

1 WILLIAM G. LIENHARD
wlienhard@urbanjustice.org

2 EMILIA SICILIA
esicilia@urbanjustice.org

3 JENNIFER PARISH
jparish@urbanjustice.org

4 URBAN JUSTICE CENTER
123 William Street, 16th Fl.

5 New York, NY 10038

T: (646) 602-5668 / F: (212) 533-4598

6 CHRISTOPHER A. DOUGLAS (SBN 239556)

7 cdouglas@legalaidsmc.org

M. STACEY HAWVER (SBN 146012)

8 mshawver@legalaidsmc.org

LEGAL AID SOCIETY OF SAN MATEO COUNTY

9 521 East 5th Avenue

San Mateo, CA 94402

10 T: (650) 558-0915 / F: (650) 558-0673

11 MARILYN HOLLE (SBN 61530)

marilyn.holle@disabilityrightsca.org

12 DISABILITY RIGHTS CALIFORNIA

3580 Wilshire Blvd. Suite 902

13 Los Angeles, CA 90010-2522

T: (213) 427-8747 / F: (213) 427-8767

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

TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 19, 2009, at 2:00 p.m., before the Honorable Claudia Wilken, at the United States Courthouse at 1301 Clay Street, Oakland, California 94612, Plaintiffs will and hereby do move for summary adjudication and for an order determining that Defendant's policy of suspending or denying benefits, and decertifying or denying certification, to otherwise eligible beneficiaries and representative payees of Old Age, Survivors, and Disability Insurance ("OASDI"), Supplemental Security Income ("SSI"), and Special Veterans Benefits ("SVB"), is unlawful and contrary to both the statutory requirements set forth in 42 U.S.C. §§ 402(x)(1)(A)(iv), 1004(a)(2), 1382(e)(4)(A) and the implementing regulations codified in 20 C.F.R. §§ 416.1339(b)(i)(A)-(B), 408.810(b).

This Motion is made pursuant to Rules 56(a) and (d) of the Federal Rules of Civil Procedure and Civil Local Rule 56-1. The Motion is based upon this Notice of Motion, the attached Memorandum of Points and Authorities, the declaration of Gerald A. McIntyre filed herewith, and such additional argument as may be presented in Plaintiffs' reply and at any hearing on this Motion.

DATED: January 15, 2009

Respectfully submitted,

By: /s/ David H. Fry

DAVID H. FRY

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Social Security Administration (“SSA”) has adopted a blanket policy of denying or suspending federal benefits to qualified beneficiaries, and of decertifying or refusing to certify qualified representative payees, whenever the agency believes that such individuals are subject to a felony arrest warrant. This policy is unlawful. It is contrary to both the governing federal statutes and the agency’s own implementing regulations, which require such decisions to be made not merely on the basis of an outstanding warrant, but on a specific finding that the beneficiary or representative payee is “fleeing” with the specific intent to avoid prosecution, custody, or confinement for a felony. Pursuant to this policy, the SSA has unlawfully denied benefits to, or suspended the benefits of, thousands of otherwise eligible beneficiaries and representative payees of Old Age, Survivors, and Disability Insurance (“OASDI”), Supplemental Security Income (“SSI”), and Special Veterans Benefits (“SVB”) (collectively, the “Benefit Programs”).

With this motion, Plaintiffs seek a summary determination that the SSA’s policy pertaining to these flight-with-intent provisions is unlawful, a legal proposition that is well-established. *See, e.g., Fowlkes v. Adamec*, 432 F.3d 90, 96-97 (2d Cir. 2005); *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’r 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). Plaintiffs do not ask the Court to determine whether any single individual is eligible for benefits. Instead, Plaintiffs ask this Court to hold, in accord with the numerous federal courts that have considered the issue, that the SSA cannot deny or suspend benefits, or decertify or refuse to certify representative payees, based solely on the existence of an outstanding arrest warrant. Because such a determination rests on the existence and undisputed terms of the SSA’s internal policies and procedures, summary adjudication on this issue is warranted and would allow this case to proceed most efficiently.

II. STATEMENT OF FACTS

A. The SSA's Governing Statutes Authorize the SSA to Deny or Suspend Benefits When a Beneficiary Is "Fleeing to Avoid Prosecution."

Under several substantially identical statutes and regulations, federal law renders ineligible for the Benefit Programs those persons who are "fleeing to avoid prosecution, or custody or confinement after conviction," for a felony. 42 U.S.C. §§ 402(x)(1)(A)(iv), 1004(a)(2), 1382(e)(4)(A). For instance, effective August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), Pub. L. No. 104-193, amended the Social Security Act ("the Act") by adding a provision authorizing the SSA to suspend or deny SSI benefits to individuals fleeing to avoid prosecution, custody, or confinement for a felony. The PRWORA provides, in relevant part:

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

(i) 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

42 U.S.C. § 1382(e). Likewise, in 1999, when authorizing the SVB program to provide benefits to certain World War II veterans residing outside of the United States, Congress extended the Act's flight-with-intent eligibility restrictions of 42 U.S.C. § 1382(e)(4)(A)(i) to the SVB program. 42 U.S.C. § 1004(a)(2). Six years later, in 2005, Congress extended these same restrictions to OASDI as well. 42 U.S.C. § 402(x)(1)(A)(iv).

B. The SSA's Implementing Regulations Require an "Appropriate Finding" That A Beneficiary "Is Fleeing, or Has Fled, to Avoid Prosecution."

The SSA has issued two sets of regulations implementing these various flight-with-intent statutory provisions. First, in 2000, the SSA issued regulations regarding the SSI program. These regulations provide 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;

20 C.F.R. § 416.1339(b) (emphasis added). In 2003, the SSA issued largely identical regulations applicable to the SVB program. 20 C.F.R. § 408.810(b).

C. The SSA's Internal Guidelines Directing Agency Employees To Deny and Suspend Benefits Based Solely on the Existence of an Outstanding Warrant.

Notwithstanding the governing statutes and implementing regulations described above, the SSA has issued internal policy guidelines, under which the agency's employees deny and suspend payments under the Benefits Programs based solely on the existence of an "unsatisfied warrant" against a beneficiary or representative payee. For example, with respect to the PRWORA, the SSA's guidelines on the SSI program's "ineligibility criteria" state:

An individual is ineligible to receive SSI benefits for any month during which he/she

Has an unsatisfied warrant for his/her arrest for a crime, or attempt to commit a crime, that is a felony . . .

McIntyre Decl. Ex. A (SSA Program Operations Manual System Section SI 00530.001). The SSA has issued substantially similar guidelines in the context of OASDI. McIntire Decl. Ex. B (SSA Program Operations Manual System Section GN 02613.001).

These criteria do not require that the beneficiary or representative payee be "fleeing" prosecution — the agency's internal guidelines describing the eligibility criteria, which at one point tracked the statutory criteria, were actually amended to omit the word "fleeing" altogether. Compare McIntire Decl. Ex. C to Ex. A. Nor do these "ineligibility criteria" require a judicial finding that the person in question be "fleeing." In fact, the agency has issued an additional policy guideline concerning the timing of when applicants become ineligible, which specifically

1 provides that “[t]he warrant does not have to state that the individual is ‘fleeing’ for the
 2 suspension to apply.” McIntyre Decl. Ex. D (SSA Program Operations Manual System Section
 3 SI 00530.010).

4 **D. Except in the Second Circuit, Where Its Policy Has Been Declared Unlawful,**
 5 **the SSA Considers a Beneficiary To Be “Fleeing” Even When Unaware that**
 6 **Criminal Charges Have Been Filed.**

7 The United States Court of Appeals for the Second Circuit ruled in December 2005 that
 8 the “the plain language of the statute and its implementing regulation” preclude the SSA from
 9 determining that a person is “fleeing to avoid prosecution” based solely on the fact that there is an
 10 outstanding warrant for a person’s arrest. *Fowlkes*, 432 F.3d at 96. The Second Circuit held that,
 11 instead, there must be a “conscious evasion of arrest or prosecution.” *Id.* It held that “benefits
 12 may be suspended only as of the date of a warrant or order issued by a court or other authorized
 13 tribunal *on the basis of a finding that an individual has fled or was fleeing from justice*” and that a
 14 person’s flight must be “undertaken with a specific intent, i.e., to avoid prosecution.” *Id.* at 96-97
 15 (emphasis added).

16 In response to that decision, the SSA issued an “Acquiescence Ruling.” *See* McIntyre
 17 Decl. Ex E. In that ruling, the SSA stated that it would follow the Second Circuit’s ruling in
 18 *Fowlkes* as to all beneficiaries and representative payees “who live in Connecticut, New York, or
 19 Vermont.” *Id.* at 1. As to all others, the SSA stated that, for purposes of eligibility under the
 20 Benefits Program, a person will continue to be deemed “fleeing” prosecution or confinement even
 21 when they are unaware that they are being sought by authorities. *Id.* at 2. (“We interpret [the
 22 Act] to mean that a person is ‘fleeing to avoid prosecution, custody, or confinement’ when a
 23 person has an outstanding warrant for his or her arrest, *even if that person is unaware of that*
 24 *warrant.*” (emphasis added)).

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III. ARGUMENT

A. Summary Judgment Is Appropriate Where the Undisputed Facts Regarding a Published Government Policy Establish Its Invalidity.

Summary adjudication is properly granted when no genuine and disputed issues of material fact remain, and when, viewing the evidence most favorably to the non-moving party, the movant is entitled to prevail as a matter of law. Fed.R.Civ.P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285, 1288 (9th Cir. 1987); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The applicable substantive law determines which facts are material to the case; material facts that preclude summary adjudication are those that, under applicable substantive law, would affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In a challenge such as this one, where Plaintiffs contest not a factual determination regarding an individual's eligibility for benefits, but rather the collateral issue of the validity of a published government policy, any facts pertaining to the individual beneficiaries are immaterial and summary adjudication is appropriate based on the undisputed operation of the policy. *See, e.g., Johnson v. Shalala*, 2 F.3d 918, 922 (9th Cir. 1993).

B. It Is Undisputed That the SSA Denies and Suspends Benefits Without First Making the Requisite Finding That the Beneficiary or Representative Payee Had a Specific Intent To Flee To Avoid Prosecution, Custody, or Confinement.

The SSA's policy of finding otherwise-qualified SSI, OASDI, and SVB beneficiaries and representative payees ineligible based on the mere existence of a warrant, without a finding that the person is fleeing prosecution or custody or confinement after conviction for a felony, contradicts the clear language of the statutes and the relevant implementing regulations. The plain language of each of the relevant flight-with-intent statutes requires a finding, *prior* to the suspension or denial of benefits, that an individual is "fleeing" with the specific intent "to avoid prosecution, or custody or confinement." 42 U.S.C. §§ 402(x)(1)(A)(iv), 1004(a)(2), 1382(e)(4)(A). The relevant regulations require, furthermore, that that finding be made "by a court or other duly authorized tribunal." 20 C.F.R. §§ 408.810(b), 416.1339(b).

1 It is no surprise, therefore, that federal courts have repeatedly rejected the SSA's attempts
 2 to suspend benefits based on its internal guidelines, which do not require any finding (by a court
 3 or anyone else) that the beneficiary is "fleeing." *Fowlkes*, 432 F.3d at 96-97; *Reff*, 2008 WL
 4 4277713, at *7; *Caldwell*, 2008 WL 2713714, at *4 *Hull*, 336 F. Supp. 2d at 1116-17; *Thomas*,
 5 2004 WL 1529280, at *4; *Garnes*, 352 F. Supp. 2d at 1066. In *Fowlkes*, for example, the Second
 6 Circuit expressly held that the SSI statute "does not permit the Commissioner to conclude simply
 7 from the fact that there is an outstanding warrant for a person's arrest that he is 'fleeing to avoid
 8 prosecution.'" *Id.* The *Fowlkes* court held, moreover, that the regulations permit the agency to
 9 suspend benefits only after a court or other authorized tribunal has made the required finding:
 10 "[T]he regulation does not permit the *agency* to make a finding of flight; rather, it demands a
 11 court or other appropriate tribunal to have issued a warrant or order based on a finding of flight."
 12 *Id.* at 97 (emphasis in original). The Second Circuit based these rulings on the plain language of
 13 the SSI statute and accompanying regulations, noting that the court "need not afford any
 14 deference to the [SSA's construction] here, because the plain language of the statute and its
 15 implementing regulation do not permit th[at] construction" *Id.* at 96.¹

16 *Hull v. Barnhart* is to the same effect. In that case, the plaintiff moved from Nevada to
 17 Oregon several months before criminal charges were filed against her in Nevada. While the
 18 charges were pending, she obtained an Oregon drivers license and lived at the same address for
 19 four years, then lived at another address for a further three years. *Hull*, 336 F. Supp. 2d at 1115.
 20 She had not changed her name or done anything else to avoid law enforcement. *Id.* In fact, she
 21 remained unaware of the charges until the SSA sought to suspend her SSI benefits. *Id.* She was
 22 eventually arrested at her home and she waived extradition, but Nevada did not bother to take her

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 24 ¹ See also *Garnes*, 352 F. Supp. 2d at 1067 ("The court agrees that the plain language of [the
 25 regulation] requires more than the existence of a warrant. It requires a finding by a court or other
 26 duly authorized tribunal . . . 'that the individual is fleeing, or has fled, to avoid prosecution.'");
 27 *Hull*, 336 F. Supp. at 1116-17 ("The Commissioner argues that if a warrant is issued, the person is
 28 a fleeing felon under the statute and remains so until the warrant is resolved. This is not what the
 regulation provides. It requires a court finding that the person is fleeing. . . . This is the only way
 to give meaning to all parts of the regulation." (emphasis added)); *Thomas*, 2004 WL 1529280, at
 *4 ("[T]he commissioner's interpretation of the statute . . . is unreasonable to the extent that it
 presumes that the statute applies merely from the existence of an arrest warrant.").

1 into custody and the Oregon authorities subsequently released her. *Id.* The court found that the
2 SSA had improperly suspended her benefits because there was no evidence that the court issuing
3 the warrant had made a finding that the plaintiff was fleeing prosecution and, in any event, the
4 evidence was insufficient to support the SSA's finding that the plaintiff was, in fact, fleeing. *Id.*
5 at 1117.

6 Similarly, here in the Northern District, Chief Judge Walker reversed the SSA's
7 suspension of benefits to an SSI beneficiary suffering from the combined effects of a
8 developmental disability and mental illness. *Garnes*, 352 F. Supp. 2d at 1066. The plaintiff had
9 been arrested in Virginia for failure to return a rental car on time. *Id.* at 1060. She had been
10 released on her own recognizance and agreed to appear in court a few days later. *Id.* Due to a
11 fire and resulting asbestos contamination, the court was closed on the date the plaintiff had been
12 scheduled to appear. *Id.* A few weeks later, the plaintiff's mother — with whom plaintiff lived
13 — relocated from Virginia to California. *Id.* Unable to live on her own, plaintiff had moved with
14 her mother to California. *Id.* at 1060-61. A warrant issued when she had subsequently failed to
15 appear in court in Virginia. *Id.* at 1061. She was later arrested in California based on the
16 outstanding warrant, but Virginia chose not to extradite her. *Id.* More than eleven years later,
17 SSA suspended her SSI benefits on the basis of the warrant. *Id.* Although an Administrative Law
18 Judge ("ALJ") found the suspension to be improper because there was no intent to flee, the ALJ's
19 decision was reversed by the Appeals Council, which essentially concluded that intent was not
20 required. *Id.* at 1062. Chief Judge Walker squarely rejected the SSA's contention that a finding
21 of intent was unnecessary in order to suspend benefits under the statute: "SSA's contention that
22 there is, in effect, no intent requirement for an individual to be found to be 'fleeing' is
23 insupportable." *Id.* at 1065.

24 As these and other courts have held, the plain language of these statutes sets forth an intent
25 requirement, namely, that the individual not only be "fleeing," but that the specific purpose of
26 that "flight" be the avoidance of "prosecution, or custody or confinement after conviction" for a
27 felony. 42 U.S.C. §§ 402(x)(1)(A)(iv), 1004(a)(2), 1382(e)(4)(A). The statutes' "use of the
28 words 'to avoid prosecution' confirms that for 'flight' to result in a suspension of benefits, it must

1 be undertaken with a specific intent, i.e., to avoid prosecution.” *Fowlkes v. Adamec*, 432 F.3d 90,
 2 96-97 (2d Cir. 2005); *see also Garnes v. Barnhart*, 352 F. Supp. 2d 1059, 1066 (N.D. Cal. 2004)
 3 (“[T]he concept of ‘fleeing’ contain[s] an intent requirement.”). This interpretation is supported
 4 by the relevant regulations, which require a court “finding that the individual . . . [i]s fleeing, or
 5 has fled, to avoid” prosecution or confinement. 20 C.F.R. § 416.1339(b)(i)(A)-(B); 20 C.F.R. §
 6 408.810(b); *accord United States v. Murguia-Oliveros*, 421 F.3d 951, 954 (9th Cir. 2005)
 7 (holding that, in the context of 18 U.S.C. § 3290, the term “fleeing” demands that the defendant
 8 “concealed himself or herself with an intent to avoid prosecution”).

9 Despite the clear language of the statute and its own regulations, and despite the consistent
 10 judicial interpretations thereof, the SSA has persisted with its policy of denying and suspending
 11 benefits for every person who it believes has a felony warrant outstanding against him or her —
 12 without regard to whether the court issuing the warrant made any finding that the person was
 13 fleeing prosecution and, indeed, without regard to whether, in fact, the person ever intended to
 14 flee prosecution, or even has the necessary mental capacity and/or mental state to form such an
 15 intent. *Garnes*, 352 F. Supp. 2d at 1066. Thus, contrary to the plain language of the governing
 16 statute and regulations, the SSA’s policy requires *neither* action nor any particular mental state.
 17 The SSA even contends that a person can be “fleeing to avoid prosecution” without knowing it,
 18 *i.e.*, even if he or she does not know that criminal charges are pending or likely. McIntyre Decl.
 19 Ex. E at 2. The federal courts have repeatedly found this internal policy to be contrary to the
 20 plain language of the statute and regulations and, therefore, not entitled to deference and
 21 unlawful. *Fowlkes*, 432 F.3d at 96-97; *Garnes*, 352 F. Supp. 2d at 1065-66. This Court should
 22 do so as well.

23 C. **Individual Circumstances of Beneficiaries and Representative Payees Are**
 24 **Immaterial To This Court’s Determination That the SSA’s Policy Is Illegal**
 25 **and Do Not Preclude Summary Adjudication.**

26 The SSA has a set policy, written into its employee manual, concerning the application of
 27 the flight-with-intent provisions. The material facts regarding the existence and operation of this
 28 policy are not in dispute. Because this motion seeks a determination only as to the validity of this

1 written policy, on behalf of class members affected by it, the circumstances of any individual
2 beneficiary or representative payee — including the question of whether such individuals may fall
3 within the scope of the flight-with-intent provisions, as lawfully applied — are irrelevant to the
4 question presented in this motion. Therefore, for purposes of this motion for summary
5 adjudication, there are no material facts in dispute that might preclude summary adjudication of
6 the legality of the SSA's policy.

7 As described in Plaintiffs' motion for a preliminary injunction, this case involves not a
8 "claim for benefits," but rather an assertion by Plaintiffs that a "systemwide . . . policy . . . [is]
9 inconsistent in critically important ways with established regulations." *Bowen v. City of New*
10 *York*, 476 U.S. 476, 485 (1986). As such, Plaintiffs' claims are entirely "collateral" to a claim for
11 benefits because they "challenge[] the [SSA's] failure to follow the applicable regulations."
12 *Johnson v. Shalala*, 2 F.3d 918, 921 (9th Cir. 1993); *see also Kildare v. Saenz*, 325 F.3d 1078,
13 1082-83 (9th Cir. 2003) (holding that claims are collateral where they "challenge[] specific . . .
14 policies that conflict[] with established law"). This lawsuit does *not* concern individual benefit
15 determinations; rather, it simply seeks to force the SSA to make those determinations in
16 accordance with the applicable statutes and its own regulations.

17 There can be no dispute about the ways in which the SSA's policy deviates from the
18 governing statutes and regulations. The SSA's own published operating manual establishes that
19 the agency makes benefits determinations without first establishing that the beneficiary or
20 representative payee was actually fleeing. McIntyre Decl. Exs. A & B. The SSA's published
21 policies further establish that the agency denies or suspends benefits, and decertifies or denies
22 certification to, otherwise eligible beneficiaries and representative payees on the basis of
23 "unsatisfied warrants" alone, without making any determination about whether the individual in
24 question actually had an intent to flee prosecution or confinement. *Id.* In fact, the SSA's
25 published policies establish that the agency makes these determinations whether or not the
26 beneficiary or representative payee knows that he or she is the subject of an outstanding warrant
27 at all. McIntyre Decl. Ex. D. None of these aspects of the SSA's policies is disputed, and each
28 of them is sufficient to establish that the agency's actions are illegal. "We do not need a detailed

1 factual record for each claimant to decide such a straightforward statutory challenge . . . because
2 the issue posed by class members is one purely of statutory construction.” *Johnson*, 2 F.3d at 922
3 (quotations and citations omitted)). Accordingly, summary judgment on the record presented
4 herein is warranted. Fed. R. Civ. P. 56; *Celotex*, 477 U.S. at 322; *Anderson*, 477 U.S. at 248;
5 *Matsushita*, 475 U.S. at 587.

6 IV. CONCLUSION

7 For the foregoing reasons, Plaintiffs respectfully request that the Court adjudicate
8 summarily the validity of the SSA’s written policy regarding the flight-with-intent provisions of
9 the governing statutes and implementing regulations of the Benefits Programs and issue an order
10 determining that Defendant’s policy of suspending or denying benefits, and decertifying or
11 denying certification to, otherwise eligible beneficiaries and representative payees of the Benefit
12 Programs, is unlawful and contrary to both the statutory requirements set forth in 42 U.S.C. §§
13 402(x)(1)(A)(iv), 1004(a)(2), 1382(e)(4)(A) and the implementing regulations codified in
14 20 C.F.R. §§ 416.1339(b)(i)(A)-(B), 408.810(b).

15
16 DATED: January 15, 2009

MUNGER, TOLLES & OLSON LLP
DAVID H. FRY
MARK R. CONRAD
JEREMY S. KROGER

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20 By: /s/ David H. Fry
DAVID H. FRY

Motions4:08-cv-04735-CW Martinez et al v. Astrue

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Docket Text:

MOTION for Summary Judgment *Plaintiff's Notice of Motion and Motion for Summary Adjudication of the Legality of Defendant's Policy Regarding "Fleeing" Beneficiaries; Memorandum of Law In Support Thereof* filed by Jimmy Howard, Roberta Dobbs, Brent A. Roderick, Sharon D. Rozier, Joseph Sutrynowicz, Rosa Martinez. Motion Hearing set for 2/19/2009 02:00 PM in Courtroom 2, 4th Floor, Oakland. (Fry, David) (Filed on 1/15/2009)

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Anna Margaret Rich arich@nslc.org

Christopher Allen Douglas cdouglas@legalaidsmc.org

David H. Fry frydh@mto.com, jeremy.kroger@mto.com, julie.lunsford@mto.com,
mark.conrad@mto.com

Gerald Andrew McIntyre GMCINTYRE@NSCLC.ORG

Kevin Edward Prindiville kprindiville@nslc.org

M. Stacey Hawver mshawver@legalaidsmc.org

Mark Russell Conrad Mark.Conrad@mto.com

Victoria R. Carradero victoria.carradero@usdoj.gov, bonny.wong@usdoj.gov

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Emilia Sicilia
Urban Justice Center
123 William Street, 16th Floor
New York, NY 10038

Jennifer Parish
Urban Justice Center
123 William Street, 16th Floor
New York, NY 10038

Marilyn Holle
Disability Rights California
3580 Wilshire Blvd., Suite 902
Los Angeles, CA 90010-2512

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