

The JS 44 civil cover sheet and the information contained hereon neither replace nor supplement the filing and service of papers or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

ORIGINAL

I. (a) PLAINTIFFS
 ROSA MARTINEZ and JIMMY HOWARD, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 DAVID FRY (SB # 189276)
 Munger, Tolles & Olson LLP
 560 Mission St., 27th Floor, San Francisco, CA 94105
 (415) 512-4000

DEFENDANTS
 MICHAEL J. ASTRUE, Commissioner of Social Security

County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

99

08 4735 ERL

BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State.	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury — Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury — Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA(1395ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		LABOR		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 850 Securities/Commodities/Exchange
			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
			<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 880 Other Statutory Actions
				<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 891 Agricultural Acts
					<input type="checkbox"/> 892 Economic Stabilization Act
					<input type="checkbox"/> 893 Environmental Matters
					<input type="checkbox"/> 894 Energy Allocation Act
					<input type="checkbox"/> 895 Freedom of Information Act
					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. Section 405(g)

Brief description of cause:
 Challenge of Unlawful Social Security Admin. Policy

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

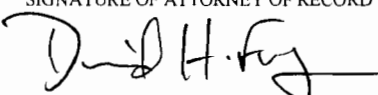
PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND

SAN JOSE

DATE: 10/15/08

SIGNATURE OF ATTORNEY OF RECORD: 

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15 ROSA MARTINEZ, JIMMY HOWARD and others
similarly situated

16 Additional counsel listed on signature page

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

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

22 Plaintiffs,

23 vs.

24 MICHAEL J. ASTRUE, Commissioner of
25 Social Security,

26 Defendant.

FILED
02 OCT 15 AM 10:21
RICHARD W. WILKINS
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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CASE NO.

CLASS ACTION COMPLAINT

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.¹ 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
appropriate *finding* that the individual — (A) Is fleeing, or has fled,
25 to avoid prosecution . . . ; (B) Is fleeing, or has fled, to avoid
custody or confinement after conviction . . . ; or (ii) The first month
26 during which the individual fled to avoid such prosecution, fled to
27
28

¹ 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.² 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 ² 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’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).

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.

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.

28

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**
12 **AND ITS IMPLEMENTING REGULATIONS**

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

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

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

23 **SECOND CAUSE OF ACTION**

24 **MANDAMUS**

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

26 60. The Commissioner has a non-discretionary statutory obligation to make benefit
27 determinations in accordance with the Social Security Act, as amended, and its implementing
28 regulations. Among other things, the Commissioner is required to award benefits to applicants
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;

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- f. Preliminarily and permanently enjoin the Commissioner immediately to redetermine and re-adjudicate all determinations to suspend or deny SSI, SVB, and OASDI benefits and all determinations to deny certification as representative payee for such benefits made pursuant to 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) and 1383(a)(2)(B)(iii)(V), and to reverse all such determinations unless made on the basis of a finding by a court that the individual was fleeing with the specific intent to avoid prosecution or custody or confinement after conviction for a felony;
- g. Issue a writ of mandamus compelling the Commissioner immediately to: (1) cease denying or suspending benefits or denying certifications as representative payees 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) and 1383(a)(2)(B)(iii)(V), without first determining that the individual was fleeing with the specific intent to avoid prosecution or custody or confinement after conviction for a felony, and (2) vacate all prior such suspensions and denials of benefits and denials of certification as representative payee, in which there was no prior determination that the individual was fleeing with the specific intent of avoiding prosecution or custody or confine for a felony;
- h. Award Plaintiffs costs, disbursements, and reasonable attorneys' fees, including, without limitation, the costs and fees authorized by 28 U.S.C. § 2412;

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

DATED: October 15, 2008

MUNGER, TOLLES & OLSON LLP
DAVID H. FRY

By: 
DAVID H. FRY

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Social Security Administration
Supplemental Security Income
Notice of Planned Action

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

570-35-1588DI

Page 4

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 on the Internet. You will find the law and regulations about SSI eligibility and SSI payment amounts at 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


SOCIAL SECURITY ADMINISTRATION

TOE 710

Form Approved
OMB No. 0960-0622

REQUEST FOR RECONSIDERATION

(Do not write in this space)

NAME OF CLAIMANT <i>Rosa Martinez</i>	NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON (If different from claimant.)	 DEC 11 2007
SOCIAL SECURITY CLAIM NUMBER 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)	

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 <i>Rosa Martinez</i>			SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE <input type="checkbox"/> NON-ATTORNEY <input type="checkbox"/> ATTORNEY		
MAILING ADDRESS <i>334 Redwood Ave #5</i>			MAILING ADDRESS		
CITY <i>Redwood</i>	STATE <i>CA</i>	ZIP CODE <i>94061</i>	CITY	STATE	ZIP CODE
TELEPHONE NUMBER (include area code) <i>(650) 427-2045</i>		DATE <i>12-11-07</i>	TELEPHONE NUMBER (include area code)		DATE

TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION

See list of initial determinations

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

RETIREMENT AND SURVIVORS RECONSIDERATIONS ONLY (CHECK ONE) REFER TO (GN 03102.125)	SOCIAL SECURITY OFFICE ADDRESS
<input type="checkbox"/> NO FURTHER DEVELOPMENT REQUIRED (GN 03102.300) <input type="checkbox"/> REQUIRED DEVELOPMENT ATTACHED <input type="checkbox"/> 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) <input checked="" type="checkbox"/> DISABILITY DETERMINATION SERVICES (ROUTE WITH DISABILITY FOLDER)	<input type="checkbox"/> PROGRAM SERVICE CENTER	<input checked="" type="checkbox"/> DISTRICT OFFICE RECONSIDERATION
<input type="checkbox"/> ODO, BALTIMORE	<input type="checkbox"/> OIO, BALTIMORE	<input type="checkbox"/> CENTRAL PROCESSING SITE (SVB)
<input type="checkbox"/> ODO, BALTIMORE	<input type="checkbox"/> OEO, BALTIMORE	

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.

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

570-35-1588

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