

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

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17

UNITED STATES DISTRICT COURT

18

NORTHERN DISTRICT OF CALIFORNIA

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OAKLAND DIVISION

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

23 Plaintiffs,

24

vs.

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

26

27 Defendant.

28

CASE NO. 08-CV-4735 CW

**STIPULATION OF SETTLEMENT**

Date: August 11, 2009  
Time: 2:00 p.m.  
Dept: Courtroom 2, 4th Floor

**The Hon. Claudia Wilken**

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

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

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

13 Attorneys for PLAINTIFFS  
14

15 JOSEPH P. RUSSONIELLO (SBN 44332)  
United States Attorney  
16 JOANN M. SWANSON (SBN 88143)  
Chief, Civil Division  
17 VICTORIA R. CARRADERO (SBN 217885)  
Assistant United States Attorney  
18 ANDREW Y.S. CHENG (SBN 164613)  
Assistant United States Attorney  
19 MICHAEL T. PYLE (SBN 172954)  
Assistant United States Attorney  
20 450 Golden Gate Avenue, 9th Floor  
San Francisco, California 94102-3495  
21 Telephone: (415) 436-6813  
Facsimile: (415) 436-6748  
22 Email: Andrew.Cheng@usdoj.gov  
Email: Victoria.Carradero@usdoj.gov

23 Attorneys for FEDERAL DEFENDANT  
24  
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**RECITALS**

WHEREAS, on October 15, 2008, Plaintiffs Rosa Martinez and Jimmy Howard filed this putative class action lawsuit against Defendant Michael J. Astrue, in his official capacity as Commissioner of Social Security;

WHEREAS an Amended Complaint was filed on December 12, 2008 adding Plaintiffs Roberta Dobbs, Brent Roderick, Sharon Rozier, and Joseph Sutrynowicz;

WHEREAS Plaintiffs allege that Defendant’s policy of denying or suspending benefits to persons on the basis of an outstanding felony arrest warrant and not permitting persons with outstanding felony arrest warrants to serve as representative payees violates the Social Security Administration’s governing statutes and regulations;

WHEREAS Defendant denies Plaintiffs’ allegations, denies all liability with respect to the Action, and denies that it committed any violation of law;

WHEREAS the Parties desire to resolve amicably all the claims raised in the above-captioned action without admission of liability in order to avoid the substantial expense, inconvenience, and distraction of protracted litigation;

WHEREAS the Parties have conducted discussions and arm’s length negotiations with Defendant’s Counsel with respect to a compromise and settlement of the Action with a view to settling the issues in dispute and furnishing relief consistent with the interests of the Named Plaintiffs and the Class;

WHEREAS the Parties (1) have concluded that the terms and conditions of this Stipulation of Settlement are fair, reasonable and in the best interests of the Named Plaintiffs and the Class; (2) have agreed that the Released Parties should be released from the Released Claims pursuant to the terms and provisions of this Stipulation of Settlement; (3) and have agreed to the dismissal of the Action with prejudice, after considering the substantial benefits that the Named Plaintiffs and the Class will receive from settlement of the Action, the risks of litigation, and the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation of Settlement;

1 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and  
2 among the Named Plaintiffs and Defendant, through their respective attorneys, subject to  
3 approval by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in  
4 consideration of the benefits flowing to the Parties from the Settlement Agreement, that all  
5 Released Claims shall be compromised, settled, forever released, barred and dismissed, with  
6 prejudice, upon and subject to the following terms and conditions.

7 **DEFINITIONS**

8 “Action” means the litigation in the United States District Court, Northern District  
9 of California, Case No. 08-CV-4735 CW.

10 The “Benefit Programs” means, collectively, the SSI, SVB, and OASDI benefit  
11 programs under the Social Security Act.

12 “Class Counsel” or “Plaintiffs’ Counsel” means: the National Senior Citizens Law  
13 Center; Munger, Tolles & Olson, LLP; the Urban Justice Center; Disability Rights California; and  
14 the Legal Aid Society of San Mateo County.

15 The “Class” or “Class Members” means: for purposes of this settlement only, a  
16 Plaintiff class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, comprising: All  
17 persons whose SSI, SVB, or OASDI benefits have been suspended or denied, or who have been  
18 notified of a proposed suspension or denial of such benefits, for “fleeing to avoid prosecution or  
19 custody or confinement after conviction” for a felony or who are not permitted to serve as  
20 Representative Payees for SSI, SVB or OASDI benefits for “fleeing to avoid prosecution or  
21 custody or confinement after conviction” for a felony. The class shall not include, and this  
22 settlement shall not apply to, any individual who has received a final federal court disposition  
23 regarding payment or nonpayment of benefits due to fugitive felon status.

24 “Court” means the United States District Court for the Northern District of  
25 California.

26 “Defendant” or “the Commissioner” means Michael J. Astrue, the Commissioner  
27 of Social Security, in his official capacity.  
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1           “Effective Date” means 61 days from the Court’s entry of an order granting final  
2 approval of the settlement terms or after which the time to file any appeal has concluded and any  
3 and all objections have been resolved and appeals have been exhausted, whichever is later.

4           “Final Approval Date” means the date upon which the Court enters an order  
5 granting final approval of this Settlement Agreement, after having determined that it is adequate,  
6 fair, reasonable, equitable, and just to the Class as a whole after a hearing on the fairness of the  
7 settlement.

8           “Lead Class Counsel” or “Lead Plaintiffs’ Counsel” means Gerald McIntyre of the  
9 National Senior Citizens Law Center.

10           “Named Plaintiffs” refers to Rosa Martinez, Jimmy Howard, Roberta Dobbs, Brent  
11 Roderick, Sharon Rozier, and Joseph Sutrynowicz.

12           “National Crime Information Center (NCIC) codes” refer to the offense codes  
13 categorizing felony arrest warrants on the FBI’s national database.

14           “OASDI” means Old Age, Survivors, and Disability Insurance, under Title II of  
15 the Social Security Act.

16           “Overpayment” means a determination made by the Commissioner that a program  
17 beneficiary has received more than the correct benefit payment due because of a benefit  
18 suspension based on an outstanding felony arrest warrant, unless the suspension was based on a  
19 warrant with a NCIC felony offense code of 4901 (Escape), 4902 (Flight to avoid prosecution,  
20 confinement), or 4999 (Flight-Escape).

21           “Parties” refers to the Named Plaintiffs, the Class, and Defendant.

22           “Plaintiffs” refers to the Named Plaintiffs, acting on their own behalf and on  
23 behalf of all Class Members.

24           “Post- 2006 Class Members” means all Class Members for whom SSA made an  
25 initial suspension, initial denial, or administrative appeal denial on or after January 1, 2007 based  
26 on an outstanding felony arrest warrant unless the determination was based on an outstanding  
27 felony arrest warrant with a NCIC code of 4901, 4902, or 4999; or with a pending administrative  
28 claim challenging any such suspension or denial as of August 11, 2008.

1           “Pre-2007 Class Members” means all Class Members for whom SSA made an  
2 initial suspension or initial denial based on an outstanding felony arrest warrant unless the  
3 determination was based on an outstanding felony arrest warrant with a NCIC code of 4901,  
4 4902, or 4999, on or after January 1, 2000, but before January 1, 2007, and who did not obtain an  
5 administrative appeal denial on or after January 1, 2007; or who did not have a pending  
6 administrative claim on August 11, 2008 appealing such a suspension or denial.

7           “Preliminary Approval Date” means the date upon which the Court enters the  
8 Order attached as Exhibit A preliminarily approving this Settlement Agreement, and setting a  
9 fairness hearing.

10           “Released Claims” means any and all claims asserted in the First Amended  
11 Complaint by and/or on behalf of the Class Members, and claims related to the subject matter of  
12 this litigation that could have been asserted in the First Amended Complaint.

13           “Released Parties” means Defendant, his predecessors, successors, departments,  
14 agencies, past or present agents, employees and contractors.

15           “Releasing Parties” means Plaintiffs, the Class and the Class Members, on behalf  
16 of themselves, their heirs, executors, administrators, representatives, attorneys, successors,  
17 assigns, agents, affiliates, and partners, and any Persons they represent. Nothing in this definition  
18 shall be interpreted to contravene 42 U.S.C. § 407 prohibiting transfer or assignment of claims or  
19 benefits.

20           “Representative Payee” means an individual who has been selected or appointed to  
21 receive payments on behalf of any beneficiary of the Benefit Programs pursuant to 42 U.S.C. §§  
22 405(j), 1007(d), or 1383(a).

23           “SSA” means the Social Security Administration.

24           “Settlement Agreement,” “Settlement,” or “Agreement” means this Stipulation of  
25 Settlement, including the attached exhibits.

26           “SSI” means Supplemental Security Income under Title XVI of the Social Security  
27 Act.

28           “SVB” means Special Veterans Benefits under Title VIII of the Social Security Act.

**AGREEMENT**

**ARTICLE I**

**APRIL 1, 2009 POLICY CHANGE**

1.1 Effective April 1, 2009, SSA suspends/denies benefits/payments to Class Members using the current policy and procedure only for three categories of NCIC Uniform Offense Classification Codes as follows: Escape (4901); Flight to avoid (prosecution, confinement, etc.) (4902); and Flight-Escape (4999). SSA's policy is set forth in Policy Instruction EM-09025. *See* Exhibit B.

1.2 Effective April 1, 2009, SSA applies the policy in paragraph 1.1 when considering a person's request to serve as a Representative Payee. However, SSA may use all warrant information in determining an individual's suitability to serve as a Representative Payee. *See* Exhibit C.

**ARTICLE II**

**RELIEF TO POST-2006 CLASS MEMBERS**

2.1 SSA shall provide relief to all Post-2006 Class Members consistent with the following provisions.

2.2 SSA shall identify and remove overpayments resulting from initial suspensions, initial denials, or administrative appeal denials SSA made on or after January 1, 2007 based on an outstanding felony arrest warrant unless based on a warrant with NCIC codes of 4901, 4902, or 4999 for any period of suspension prior to January 1, 2007 back to the first month of suspension. SSA will repay any sums already collected pursuant to the overpayment determination.

2.3 SSA will reinstate benefit payments for any periods of suspension subject to a redetermination of non-medical eligibility criteria. Normal redetermination procedures will apply. Close out procedures consistent with the guidance in existing POMS will apply. SSA may conduct continuing disability reviews (CDRs) pursuant to generally applicable SSA policies after benefits/payments have been reinstated.

1            2.4    SSA may need to reopen a previously denied claim to assess medical and non-  
2    medical eligibility criteria, except that where a medical determination of disability has already  
3    been made, the medical determination shall not be reopened except pursuant to generally  
4    applicable SSA policies. Normal determination of non-medical eligibility criteria will apply.

5            2.5    Except as stated herein, all payments to Post-2006, Class Members are subject to  
6    regular payment, nonpayment, and reduced payment provisions of the Social Security Act.

7            2.6    Following the Effective Date, SSA shall contact the Post-2006 Class Members  
8    through individual notices mailed to the last known address on SSA records. SSA shall bear the  
9    cost of this notice. The notices generally shall advise that SSA's policy regarding outstanding  
10    felony arrest warrants has changed and that the individuals may be entitled to or eligible for  
11    benefits or payments for applicable periods of suspension or non-payment.

### ARTICLE III

#### RELIEF TO PRE-2007 CLASS MEMBERS

12           3.1    SSA shall provide relief to all Pre-2007 Class Members consistent with the  
13    following provisions.

14           3.2    SSA shall cease to collect overpayments of any previous benefit payments made to  
15    Pre-2007 Class Members and shall remove any remaining balance. Nothing in this paragraph  
16    shall be read to require SSA to reimburse Pre-2007 Class Members for any benefit payments that  
17    the Pre-2007 Class Members have already repaid to the SSA, unless the individual meets the  
18    conditions required by SSA regulations for reopening a claim.

19           3.3    Except as stated herein, all payments to Pre-2007 Class Members are subject to  
20    regular payment, nonpayment, and reduced payment provisions of the Social Security Act.

21           3.4    Following the Effective Date, SSA shall send individual notices, mailed to the  
22    most recent address in SSA's records, to each Pre-2007 Class Member who is not receiving  
23    benefits as of April 1, 2009 on the basis that they have an outstanding felony arrest warrant other  
24    than three categories of NCIC codes of 4901, 4902, and/or 4999. SSA shall bear the cost of this  
25    one-time notice and will not conduct any follow-up address search or mailing. The notice will  
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1 inform the individual that SSA suspends or denies benefits/payments using the current policy and  
2 procedure only for three categories of NCIC codes 4901, 4902 and/or 4999. The notice will state  
3 that, if the individual thinks he/she may be eligible for benefits/payments, he/she may contact  
4 SSA through the 1-800 telephone number to schedule an appointment for prospective  
5 reinstatement of Title II benefits or to file a new application for Title II (if required), Title VIII, or  
6 Title XVI benefits. Unless an individual covered by Article II also has a separate suspension or  
7 denial in the period January 1, 2000 through December 31, 2006 for an outstanding felony arrest  
8 warrant except for warrants with codes of 4901, 4902, and/or 4999, the individual would not  
9 receive the notice covered in this paragraph.

10 3.5 If a Pre-2007 Class Member contacts SSA to make an appointment within six  
11 months of the date on the notice mailed pursuant to the preceding paragraph, that individual shall  
12 receive a “protective filing date” of April 1, 2009, for any subsequent application for benefits or  
13 request for reinstatement—i.e., SSA will treat that individual’s application or request as if it had  
14 been filed on April 1, 2009.

15 **ARTICLE IV**  
16 **PUBLICATION**

17 4.1 Immediately following the Final Approval Date, SSA shall publicize the terms of  
18 this Agreement consistent with the following provisions.

19 4.2 SSA shall post a news item on its official, public website, [www.socialsecurity.gov](http://www.socialsecurity.gov),  
20 that will summarize the key provisions of this Agreement, including the provisions set forth in  
21 ARTICLE I, ARTICLE II, and ARTICLE III.

22 4.3 SSA shall revise the “fugitive felon” webpage, located at  
23 [www.ssa.gov/oig/investigations/fugitivefelon/fugitivefelon.htm](http://www.ssa.gov/oig/investigations/fugitivefelon/fugitivefelon.htm), to reflect the changes in policy  
24 set forth in this Agreement.

25 4.4 SSA shall publish a Social Security Ruling in the Federal Register. The Ruling  
26 shall explain how SSA will implement the fleeing felon provisions under the terms of this  
27 Agreement. The Ruling shall also be made available on SSA’s website, [www.socialsecurity.gov](http://www.socialsecurity.gov).  
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**ARTICLE V****TIMEFRAMES FOR IMPLEMENTATION**

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3           5.1     On June 12, 2009, SSA developed implementation plans to set forth all anticipated  
4 timeframes for implementing the terms of this Agreement. The timeframes set forth by SSA  
5 reflect due diligence in implementation. Should the court substantively alter the terms of the this  
6 Settlement Agreement such that SSA's implementation plans must be amended, and SSA agrees  
7 to the amendment, SSA will have an additional 60 business days from the Final Approval Date to  
8 submit final implementation plans.

9           5.2     If SSA needs to make a significant adjustment to the June 12, 2009,  
10 implementation plan either due to changes required by ¶ 5.1 of this agreement or due to currently  
11 unknown facts or unanticipated circumstances (including changes in the fairness hearing date or  
12 the effective date of the settlement), SSA will notify Lead Class Counsel and explain the facts or  
13 circumstances. Upon receipt of any such notice and explanation, Lead Class Counsel may notify  
14 SSA of any concerns about the adjustment and the parties will seek to resolve these concerns  
15 amicably. If, in Lead Class Counsel's view, SSA does not adequately respond to the concerns,  
16 Lead Class Counsel will follow the dispute resolution procedures described in Article X.

**ARTICLE VI****INQUIRIES, COMMENTING, AND REPORTING**

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20           6.1     SSA shall designate an individual who will serve as a point of contact for Lead  
21 Class Counsel. Said individual will act in good faith to address any inquiries from Lead Class  
22 Counsel related to the implementation of this Agreement.

23           6.2     SSA shall provide to Lead Class Counsel an advance copy of any draft POMS  
24 instructions, Emergency Messages, and the one-time draft notices (stipulated in paragraphs 2.6  
25 and 3.4) to Class Members issued in implementation of this Settlement Agreement. Lead Class  
26 Counsel will provide comments, if any, to SSA, within two business days of receiving the drafts.  
27 SSA is not obligated to respond to Lead Class Counsel's comments or to incorporate those  
28 comments into any POMS instructions, Emergency Messages, or notices that it issues.

1           6.3     The SSA shall provide Lead Class Counsel with notification of:

2                 (a)     the dates that the SSA begins and substantially completes each phase of the  
3 implementation plan developed by the SSA pursuant to ARTICLE V of this Settlement  
4 Agreement; and

5                 (b)     the aggregate number of notices sent to individuals pursuant to ARTICLE  
6 II and ARTICLE III of this Agreement.

7   **ARTICLE VII**  
8   **ENTIRE AGREEMENT**

9           7.1     The terms of this Settlement Agreement and any exhibits thereto are the exclusive  
10 and full agreement of the Parties with respect to all claims for relief and attorneys' fees and costs  
11 as set forth in this Settlement Agreement and in the First Amended Class Action Complaint. No  
12 representations or inducements or promises to compromise this action or enter into this  
13 Settlement Agreement have been made, other than those recited or referenced in this Settlement  
14 Agreement.

15           7.2     This Settlement Agreement is not intended to change, modify, or revise SSA's or  
16 the Office of Inspector General's implementation of sections 202(x)(3)(C) and 1611(e)(5)(A) of  
17 the Social Security Act with regard to the disclosure of information to federal, state or local law  
18 enforcement.

19   **ARTICLE VIII**  
20   **APPROVAL**

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22           8.1     This Settlement Agreement is expressly conditioned upon its approval by the  
23 Court.

24           8.2     The terms of this Settlement Agreement are adequate, fair, reasonable, equitable  
25 and just.

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**ARTICLE IX**

**FINAL JUDGMENT**

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3 9.1 If, after the fairness hearing, the Court approves this Settlement Agreement as  
4 adequate, fair, reasonable, equitable and just, the Court shall direct the entry of an order  
5 dismissing this action with prejudice, pursuant to the terms of this Settlement Agreement and Fed.  
6 R. Civ. P. 41(a)(2), except that the Court shall retain jurisdiction for the limited purposes  
7 described in ARTICLE X of this Settlement Agreement. The Court's order shall incorporate the  
8 terms of the Settlement Agreement.

**ARTICLE X**

**CONTINUING JURISDICTION**

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12 10.1 The Court will retain jurisdiction over this matter for the purposes of (a) enforcing  
13 the provisions of the Settlement Agreement in the event that one of the Parties claims (after  
14 following this Agreement's dispute resolution procedures) that there has been a breach of the  
15 Settlement Agreement; (b) modifying the Settlement Agreement if jointly requested by the Parties  
16 pursuant to ARTICLE XI and (c) entering any other order authorized by the Settlement  
17 Agreement. Both Class Counsel and Defendant's counsel will make good faith efforts to  
18 amicably resolve issues with regard to the Agreement. If the parties are not able to resolve  
19 matters, they will engage in good faith mediation discussions before a magistrate judge  
20 designated by the court (the parties' preference is Magistrate Judge Edward Chen), prior to  
21 seeking enforcement pursuant to this Article.

**ARTICLE XI**

**MODIFICATION**

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24 11.1 At any time while the Court retains jurisdiction over this matter as described in  
25 ARTICLE X, Plaintiffs and Defendant may jointly agree to modify this Settlement Agreement.  
26 Any request for modification must be in writing, signed by both Class Counsel and Defendant's  
27 counsel, and is subject to approval by the Court.  
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**ARTICLE XII**

**CHANGE IN CONTROLLING LAW**

12.1 A change in controlling law, e.g., an amendment to the Social Security Act that is inconsistent with the terms of this Agreement, shall supersede the terms of this Agreement.

**ARTICLE XIII**

**RELEASE**

13.1 This Settlement Agreement fully and finally resolves all claims asserted in the First Amended Complaint filed by Plaintiffs on December 12, 2008, any and all claims related to the subject matter of this litigation that could have been asserted in the First Amended Complaint. Effective upon the Final Approval Date and subject to the terms of ARTICLE VIII and ARTICLE IX above, the Releasing Parties shall be deemed to have, and by operation of the final judgment shall have, fully, finally and forever released, relinquished, discharged, and dismissed with prejudice the Released Parties of and from any and all of the Released Claims, and the Releasing Parties shall forever be barred and enjoined from bringing or prosecuting any Released Claim against any of the Released Parties. Nothing contained herein shall release the Commissioner or SSA of any obligations arising under this Settlement Agreement.

**ARTICLE XIV**

**NO ADMISSION**

14.1 This Settlement Agreement does not constitute an admission by the Defendant of any pattern or practice that violates or fails to comply with applicable law governing the matters alleged in this action.

14.2 This Settlement Agreement, whether or not executed, and any proceedings taken pursuant to it (a) shall not be construed to waive, reduce or otherwise diminish the authority of the Defendant to enforce the laws of the United States against Class Members notwithstanding the terms of this Stipulation, consistent with the Constitution and laws of the United States; (b) shall not be offered or received against the Defendant as evidence of, or construed as or deemed

1 to be evidence of, any presumption, concession, or admission by the Defendant of the truth of any  
 2 fact alleged by the Plaintiffs or the validity of any claim that had been or could have been asserted  
 3 in the Action or in any litigation, or the deficiency of any defense that has been or could have  
 4 been asserted in the Action, or of any liability, negligence, fault, or wrongdoing of the Defendant;  
 5 or any admission by the Defendant of any violations of, or failure to comply with, the  
 6 Constitution, laws or regulations; (c) shall not be offered or received against the Defendant as  
 7 evidence of a presumption, concession, or admission of any liability, negligence, fault, or  
 8 wrongdoing; and (d) shall not be in any way referred to for any other reason as against any of the  
 9 Parties in any other civil, criminal, or administrative action or proceeding, other than such  
 10 proceedings as may be necessary to effectuate the provisions of this Settlement Agreement;  
 11 provided, however, that if this Settlement Agreement is approved by the Court, Defendant may  
 12 refer to it and rely upon it to effectuate the liability protection granted it hereunder.

#### 13 **ARTICLE XV**

#### 14 **PAYMENT OF FEES AND COSTS TO CLASS COUNSEL**

15 15.1 As part of this Settlement Agreement, Defendant agrees to pay to Class Counsel  
 16 the sum of Four Hundred Eighty Three Thousand Dollars (\$483,000.00) in full satisfaction of all  
 17 attorneys' fees, costs, and expenses for any and all claims Plaintiffs have asserted or could have  
 18 asserted in this litigation. No further attorneys' fees or costs will be paid for any actions taken by  
 19 Class Counsel (or any individual plaintiff's counsel) after March 30, 2009. Unless otherwise  
 20 agreed to in writing by the Parties, this amount shall be payable as follows:

21	▪ National Senior Citizens Law Center	\$225,000
22	▪ Munger, Tolles & Olson LLP	\$141,000
23	▪ Urban Justice Center	\$70,000
24	▪ Disability Rights California	\$35,000
25	▪ Legal Aid Society of San Mateo	\$12,000

26 15.2 These amounts shall be transmitted by way of an Electronic Funds Transfer in  
 27 accordance with instructions to be provided to SSA by each of the entities listed in Paragraph  
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1 15.1 above. Class Counsel will promptly and fully cooperate with required forms and information  
2 necessary for SSA to process payment.

3 15.3 Defendant will use best efforts to arrange for the transfer of these funds within  
4 thirty days (30) days following the Effective Date. Defendant shall notify Lead Plaintiffs'  
5 Counsel in writing if Defendant learns that there will be a delay beyond this period.

6 **ARTICLE XVI**

7 **ADDITIONAL PROVISIONS**

8 16.1 All of the exhibits attached hereto are hereby incorporated by reference as though  
9 fully set forth herein.

10 16.2 The headings herein are used for the purpose of convenience only and are not  
11 intended to have legal effect.

12 16.3 The waiver by one party of any breach of this Settlement Agreement by any other  
13 party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement  
14 Agreement.

15 16.4 This Settlement Agreement may be executed in one or more counterparts. All  
16 executed counterparts and each of them shall be deemed to be one and the same instrument  
17 provided that counsel for the parties to this Settlement Agreement shall exchange among  
18 themselves original signed counterparts.

19 16.5 This Settlement Agreement shall be binding upon, and inure to the benefit of, the  
20 successors and assigns of the parties hereto. Nothing in this provision shall be interpreted to  
21 contravene 42 U.S.C. § 407 prohibiting transfer or assignment of claims or benefits.

22 16.6 This Settlement Agreement shall not be construed more strictly against one party  
23 than another merely by virtue of the fact that it, or any part of it, may have been prepared by  
24 counsel for one of the parties, it being recognized by the parties that this Stipulation is the result  
25 of arm's length negotiations between the parties and that all parties have contributed substantially  
26 and materially to the preparation of this Stipulation.  
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1           16.7 All counsel and any other person executing this Settlement Agreement and any of  
2 the exhibits hereto, or any related settlement documents, warrant and represent that they have the  
3 full authority to do so and that they have the authority to take appropriate action required or  
4 permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

5           16.8 Class Counsel and Defendant's Counsel agree to cooperate fully with one another  
6 in seeking preliminary approval from the Court of the Settlement Agreement and to promptly  
7 agree upon and execute all such other documentation as may be reasonably required to obtain  
8 final approval of the Settlement Agreement.

9           16.9 Class Counsel agree not to encourage any Class Member, non-profit agency,  
10 individual or attorney to challenge the Settlement Agreement or interfere with the process of  
11 obtaining preliminary or final approval of the Settlement Agreement from the Court.

12  
13  
14  
15 DATED: July 21, 2009

NATIONAL SENIOR CITIZENS LAW  
CENTER  
Attorneys for Plaintiffs, on behalf of Plaintiffs  
and all Plaintiffs' Counsel

16  
17  
18 By: Gerald A. McIntyre  
19  
20 GERALD A. McINTYRE

21 DATED: July 21, 2009

UNITED STATES ATTORNEY  
JOSEPH P. RUSSONIELLO  
Attorney for Defendant

22  
23  
24 By: \_\_\_\_\_  
25 VICTORIA R. CARRADERO  
26 ASSISTANT UNITED STATES ATTORNEY  
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16.7 All counsel and any other person executing this Settlement Agreement and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

16.8 Class Counsel and Defendant's Counsel agree to cooperate fully with one another in seeking preliminary approval from the Court of the Settlement Agreement and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

16.9 Class Counsel agree not to encourage any Class Member, non-profit agency, individual or attorney to challenge the Settlement Agreement or interfere with the process of obtaining preliminary or final approval of the Settlement Agreement from the Court.

DATED: July 21, 2009

NATIONAL SENIOR CITIZENS LAW CENTER  
Attorneys for Plaintiffs, on behalf of Plaintiffs and all Plaintiffs' Counsel

By: \_\_\_\_\_  
GERALD A. McINTYRE

DATED: July 21, 2009

UNITED STATES ATTORNEY  
JOSEPH P. RUSSONIELLO  
Attorney for Defendant

By:   
VICTORIA R. CARRADERO  
ASSISTANT UNITED STATES ATTORNEY

# Exhibit A

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  
22 JOSEPH SUTRYNOWICZ, on behalf of  
themselves and all others similarly situated,

23 Plaintiffs,

24 vs.

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

27 Defendant.  
28

CASE NO. 08-CV-4735 CW

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

**The Hon. Claudia Wilken**

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

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

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

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

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

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

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

WHEREAS, Plaintiffs filed this putative class action on October 15, 2008, and filed their First Amended Complaint on December 12, 2008;

WHEREAS, this lawsuit challenges the operation and application of a policy of the Social Security Administration as inconsistent with the federal statutes and agency regulations governing the Old Age, Survivors, and Disability Insurance ("OASDI"), Supplemental Security Income ("SSI"), and Special Veterans Benefits ("SVB") programs, *see* 42 U.S.C. §§ 402(x)(1)(A)(iv) (OASDI), 1004(a)(2) (SVB), 1382(e)(4)(A) (SSI); *see also* 20 C.F.R. § 416.1339(b); *id* § 408.810(b);

WHEREAS, Defendant vigorously denies these allegations;

WHEREAS, counsel for Plaintiffs and counsel for the Commissioner of Social Security have reached agreement on the terms of a class-wide settlement of this action, which settlement encompasses the substantial modification of SSA policies pertaining to the OASDI, SSI, and SVB programs, as well as prospective and retroactive relief to individuals affected by the challenged policies;

WHEREAS, Plaintiffs have submitted a Motion for Preliminary Approval of Class Action Settlement, Class Certification, and Appointment of Class Counsel, and Directing Class Notice and Setting Final Fairness Hearing;

WHEREAS, Defendant does not oppose the action of seeking preliminary approval of the settlement, settlement-class certification, appointment of class counsel, directing class notice, and setting a fairness hearing;

NOW, THEREFORE, having considered Plaintiffs' motion, as well as the memorandum of points and authorities submitted in support thereof, the Court hereby ORDERS as follows:

//

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

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

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

//

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

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

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

28 //

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

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

7

8                           **IT IS SO ORDERED.**

9

10 DATED: \_\_\_\_\_

\_\_\_\_\_

11   The Honorable Claudia A. Wilken  
12   United States District Court Judge

13

13 Submitted by:

14 DATED: July 21, 2009

MUNGER, TOLLES & OLSON LLP  
Attorneys for Plaintiffs

15

16

17 By: \_\_\_\_\_ */s/ Mark R. Conrad*  
  MARK R. CONRAD

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# Exhibit B

SocialSecurityOnline  
www.socialsecurity.gov

# Policy Instruction

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Effective Date:  
04/01/2009

Identification Number **EM-09025**

Intended Audience: All  
RCs/ARCs/ADs/FOs/TSCs/PSCs/OCO/ODARHQ/ALJs  
Originating Office: ORDP OISP  
Title: **Fugitive Felon: Stop Suspension or Denial of Individuals with Felony Warrants Affected by the Martinez Settlement**  
Type: EM - Emergency Messages  
Program: **Title II (RSI); Title VIII (SVB); Title XVI (SSI)**  
Link To Reference: See References at the bottom of this  
EM

**Retention Date: October 1, 2009**

## Background:

As a result of a settlement agreement in *Martinez, et al. v. Astrue*, which should soon be approved by the court, this Emergency Message (EM) provides new instructions for processing Title II, Title VIII, Title XVI payments and representative payee actions that involve outstanding felony warrants. *Martinez* challenged the agency's policy and procedures in applying non payment actions to fugitive felons and non-selection of fugitive felons as representative payees. The settlement agreement requires the agency to change its processing of certain fugitive felon non-payments and non-selections (representative payees) effective April 1, 2009.

**NOTE:** The *Martinez* settlement does not affect SSA's policy or procedures for processing Title II, Title VIII, or Title XVI payments or representative payee actions for cases involving outstanding parole or probation violation warrants (e.g. offense codes 5011 and 5012.) Therefore, continue to follow current instructions for processing cases involving these warrants.

## **Martinez Settlement Policy**

Effective immediately, SSA policy is to suspend or deny Title II and Title VIII benefits or Title XVI payments, and to prohibit an individual from serving as a representative payee only if the individual's outstanding felony warrant was issued for one of the following three offenses:

- Escape (offense code 4901),
- Flight to Avoid prosecution, confinement, etc. (offense code 4902), and
- Flight-Escape (offense code 4999).

If more than one felony warrant exists, only suspend, deny, or do not select as a representative payee only for months during which the individual has a

felony warrant with one of these three offense codes.

### Processing Instructions

Apply the following instructions to individuals in all states including New York, Connecticut, and Vermont. The *Martinez* settlement should be used instead of referencing the *Fowlkes* Acquiescence Ruling (AR 06-1(2)).

1. Initiate action for suspension, non-payment, or claims denial based on an outstanding felony warrant with a felony offense code of 4901, 4902, or 4999 shown on the Fugitive Felon System Control File.
2. If an appeal is pending at the reconsideration, hearing, or Appeals Council level, apply the policy in this EM when making the appeal decision.
3. If a representative payee applicant or an existing representative payee has an outstanding felony warrant for offense code 4901, 4902, or 4999, the individual will be prohibited from serving as a representative payee. If any other felony warrant information comes to the attention of the decision-maker, it will be used to determine an applicant's suitability (or continued suitability) to serve as a representative payee.

### Title II Initial Claims

The Agency no longer asks Title II applicants or claimants about their felony status on any of the Title II benefit applications. For additional information, see GN 02613.050.

### Title XVI/Title VIII Eligibility Determinations

For Title XVI/Title VIII initial claims, a felony status question still exists on applications. To determine eligibility, verify the felony warrant offense code information to ensure that the individual does not have one of the three offense codes listed above. Complete the fugitive felon questions on the Law Enforcement (ALEF) and Felony Warrant (AWRF) screens. The good cause code "**DNH**" (individual is residing in a long term care facility) will now also be used to code cases that fall under the *Martinez* Settlement provisions in order to prevent non-payment of benefits.

Follow current procedures for completing MSSICS screens (MSOM MSSICS 008.022 and MSOM MSSICS 008.023). However, to ensure that payments will continue, also do the following:

- On the AWRF screen, enter "**1**" (Established) in the GOOD CAUSE field.
- On the DW01 screen in MSSICS, enter "**Martinez Settlement**" in Remarks.
- On the FFDG (Fugitive Felon Warrant Due Process/Good Cause) screen within the FFSCF (Fugitive Felon SSA Control File), enter "**DNH**" as the Good Cause reason.
- On the Good Cause Screen in FFAP (Fugitive Felon Automated

Process) document that *Martinez* relief was granted to the case by entering the “DNH” code.

### **Representative Payee Applications**

For representative payees, the question about felony status still exists on applications. If the applicant responds that he or she has an outstanding felony warrant, verify the offense code with OIG (see GN 02613.175 and SI 00530.150.) If the felony warrant offense code is 4901, 4902, or 4999, do not select the payee applicant. Generally, any criminal history casts serious doubt about the payee applicant’s character. For any other felony offense code, consider the reason for that warrant and the payee/beneficiary relationship in making the suitability determination.

### **Identification of Individuals Affected by the *Martinez* Settlement**

Identification of individuals affected by the *Martinez* settlement will be done centrally and appropriate notices released. Comprehensive instructions on how to handle these cases will also be released at a later date. In the meantime, if individuals contact SSA on their own initiative about the *Martinez* settlement or because they recently received a notice telling them that their benefits are being suspended or that they are not being selected as a representative payee because of an outstanding warrant for a felony other than the felony offense codes above, follow the instructions below.

#### **A. Field Office Walk-In Traffic/Phone Calls**

Each FO must maintain and preserve a list of individuals who contact the FO and state they might be due payments in connection with the *Martinez* settlement. Include on the list, the name, SSN, current address, and phone number for each individual.

No further actions should be taken at this time. Additional processing instructions will be issued at a later date. See also Pipeline Cases, below.

#### **B. TSC Calls**

If an individual calls the national 800 number about the *Martinez* settlement, the 800 number agent will create a Manual Development Worksheet (MDW) and include the individual’s name, SSN, current address, and phone number. Explain that no further action can be taken at this time, but their contact information will be provided to the individual’s servicing field office for future actions. Include in REMARKS the words “*Martinez Settlement*” and transfer the MDW to the servicing field office.

If an individual calls the national 800 number about receiving a notice of fugitive felon nonpayment on or after April 1, 2009, explain the information in Pipeline Cases, below.

#### **C. Pipeline Cases**

**Title II** - Due to the nature of the automated system that the agency has been using for fugitive felon non-payment processing, there may be cases in the pipeline which were already handled under the prior policy which resulted in non-payment for **all**

felony offense codes. This automated system releases advance notices of proposed suspension and provides a 35-day protest period before suspension actions can be taken. Because the automation of these pipeline cases can result in non-payments on or after April 1, 2009, SSA may not be able to take all corrective actions as required by the *Martinez* settlement until a later date.

However, beginning April 1, 2009, if a beneficiary contacts SSA within the 35-day advance notice protest period and the offense code on the warrant is other than 4901, 4902, 4999 (or a parole or probation offense code,) process a protest action to stop suspension of benefits according to GN 02613.450.

**Title XVI** – For cases pending a felony suspension action in a field office, per the policy above, only suspend payments if the offense code on the warrant is 4901, 4902, 4999. No change is required for probation and parole violation suspension actions.

#### **D. Good Cause Requests**

Continue to process good cause requests for any felony suspension or denial determinations following current instructions in GN 02613.025 and SI 00530.015.

If good cause cannot be approved, and the suspension/nonpayment/denial was based on a felony warrant with an offense code other than 4901, 4902, or 4999, include the beneficiary or recipient on the FO list of *Martinez* contacts as indicated above.

#### **Further Instructions and Additional Questions**

Additional *Martinez* settlement processing instructions will be issued in the future.

Direct all program related and technical questions to your RO or PC support staff. RO and PC support staff may refer questions or problems to their Central Office contacts.

#### **References:**

SI 00530.000 **Fugitive Felons and Parole and Probation Violators**

GN 02613.000 **Title II Fugitive Felons and Parole and Probation**

**Violators**

VB 00101.000 **General Information on Special Veterans Benefits**

GN 00504.102 **Representative Payees Identified by the Fugitive Felon**

**Match**

EM-09025 - Fugitive Felon: Stop Suspension or Denial of Individuals with Felony Warrants Affected by the Martinez Settlement - 04/01/2009



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# Exhibit C

SocialSecurityOnline  
www.socialsecurity.gov

# Policy Instruction

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Identification Number **EM-09024**

Effective Date:  
03/31/2009

Intended Audience: All  
RCs/ARCs/ADs/FOs/TSCs/PSCs/OCO/OCO-CSTs/ODARHQ/ALJs

Originating Office: ORDP OISP

Title: **Suspension of Representative Payee/Fugitive Felon Match Process—Manualized instructions will follow shortly**

Type: EM - Emergency Messages

Program: **Title II (RSI); Title VIII (SVB); Title XVI (SSI)**

Link To Reference: See references at the bottom of the EM.

**Retention Date: September 30, 2009**

Effective immediately, do not **initiate** actions to replace payees identified by the Rep Payee/ Fugitive Felon match process as described in GN 00504.102. That is, if advance notice to the payee has not yet been sent, take no action on the alert at this time.

If advance notice to the payee has already been sent out, complete your action to replace the payee as reflected in GN 00504.102C-F.

These instructions are temporary and are being issued due to a proposed settlement agreement in Martinez et al. v. Astrue. You will be provided with additional instructions shortly.

Direct all program related and technical questions to your RO or PC support staff. RO and PC support staff may refer questions or problems to their Central Office contacts.

References:

**GN 00504.102 - Representative Payees Identified by the Fugitive Felon Match**

**MSOM RPS 001.014 - RPS/Fugitive Felon Interface Alert**

EM-09024 - Suspension of Representative Payee/Fugitive Felon Match Process—Manualized instructions will follow shortly - 03/31/2009



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