



# **SOCIAL INSECURITY**

*How the Social Security Administration's "Fugitive Felon Program" Harms Disabled,  
Retired and Poor Americans Without Aiding Law Enforcement*

## **Mental Health Project**

Bill Lienhard, Project Director

Jennifer J. Parish, Director of Criminal Justice Advocacy

Mental Health Project  
Urban Justice Center  
123 William Street, 16th Floor  
New York City, NY 10038  
646-602-5600  
[www.urbanjustice.org](http://www.urbanjustice.org)

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## I. Introduction

*We can never insure one-hundred percent of the population against one-hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.*

– Franklin D. Roosevelt’s Statement on  
Signing the Social Security Act (Aug. 14, 1935).

In recent years, the Social Security Administration (SSA) has turned from its noble mission of protecting the disabled, retired and poor to focus instead on punishing them under its "Fugitive Felon Program" (FFP). The purported goal of the FFP is to help police apprehend wanted fugitives, but its effect has been to suspend the benefits and wreck the lives of thousands of harmless people.

For example, Martin Hicks, <sup>\*1</sup> a 45 year-old man with a history of severe psychiatric problems since adolescence, worked for many years as a digital-imaging technician until his mental illness ultimately made it impossible for him to hold a job, and he began receiving disability benefits. In December 2005, he was doing as well as he could given his illness — living in a single room in Brooklyn, and receiving treatment from a team of psychiatrists, therapists, and caseworkers — when he received a letter from SSA advising him that he was no longer eligible for disability benefits because the police department of Broward County, Florida, had issued a warrant for his arrest. Mr. Hicks was utterly perplexed; he had never had any contact with Florida police. Unable to convince SSA, Mr. Hicks turned to the Mental Health Project (MHP) for help.

We discovered that Mr. Hicks lost his disability benefits because someone in Florida used "Martin Hicks" as an alias. Although Florida authorities had a photograph of the correct person —clearly not Mr. Hicks—for months SSA refused to restore Mr. Hicks' benefits. He lost his apartment because he could not pay the rent. He lost coverage for his outpatient treatment and his psychiatric condition worsened. He fell from a fire escape at his sister’s apartment, and sustained such severe injuries to his head, legs, and back that he had to spend a month in the hospital and several weeks in a nursing home.

Only after Florida apprehended the correct person and vacated the warrant against Mr. Hicks did SSA restore his benefits. Sadly, by this time, Mr. Hicks’ mental health had deteriorated so much that he could no longer live independently.

SSA also suspended the disability benefits of Eric Aguilar, \* a 56-year-old New Yorker with traumatic brain injury (TBI), in September 2005 based on a seven-year-old warrant. Due to his TBI, Mr. Aguilar’s memory was severely impaired, but he did recall going to court in Brooklyn. Although Mr. Aguilar’s case manager gave SSA documents showing that Mr. Aguilar had resolved his case, SSA nonetheless refused to reinstate his benefits.

The case manager, frustrated and anxious because Mr. Aguilar's landlord was threatening to evict him, contacted MHP. After many calls to the police department and the court, we were able to link the warrant in question to a dismissed case. Indeed, we discovered that the warrant had been vacated just a week after it had been issued. Again, however, SSA initially refused to restore Mr. Aguilar's benefits. Finally, after tense negotiations between SSA,

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<sup>1</sup>Names that have been changed are designated with an asterisk.

the court clerk and the police department, SSA relented. By this time, Mr. Aguilar had been without any income for six months and was in danger of losing his apartment.

The harm caused by the FFP is not limited to New Yorkers. As detailed in a *Los Angeles Times* article,<sup>2</sup> examples abound nationwide.

[T]he computer dragnet frequently cut off federal benefits to the sick, poor and disabled who were neither fugitives nor felons. Many lacked financial and legal resources to get their benefits restored.

In one case, an Oregon man with a mental disorder was named on an arrest warrant for entering a rental car without permission at an airport parking lot in 1999. Four years later, computers found the record, and the man's federal disability payments stopped. The man committed suicide last year, before his benefits could be reinstated.

An Oregon woman with lung disease lost her monthly disability check and faced the loss of her government-subsidized oxygen supplies over a Nevada arrest warrant she didn't know existed.

[A] Minnesota man lost his disability support because he once disrupted Conrail train service in Ohio. He had threatened to kill himself by jumping from a trestle in Toledo. He left the state unaware that he was named on a criminal warrant.

Others regarded as fugitives and denied benefits turned out to have been in nursing homes or wheelchairs and were physically unable to flee . . .

[A] Georgia man had his disability checks cut off for four months over an unpaid 1978 motel bill in Seattle . . .

Among those penalized by loss of disability benefits was Edith Hull, 56, who lives in Oregon. When her \$358 monthly SSI disability check stopped, she was surprised to learn that she was considered a fugitive from justice. The woman, who suffers from chronic obstructive pulmonary disease, a lung disorder, also was threatened with loss of Medicaid benefits essential to pay for oxygen equipment.

The problem was a 7-year-old arrest warrant from Nevada that Hull said she knew nothing about. "I obviously wasn't fleeing. I had a driver's license for all these years. It's not like I was hiding," Hull said.

With help from Legal Aid, she found that in 1995, three months after she and her husband had moved to Oregon, a warrant had been issued. Her former Nevada employer alleged that she improperly cashed a \$962 check. She said she was owed the money. Hull and her husband, a cancer patient, borrowed heavily from relatives to pay for housing and other bills while trying to resolve the legal tangle. Without her mother-in-law, Hull said, "we wouldn't even have a car to live in."

Meanwhile, authorities in Sparks, [Nevada], declined to spend the \$3,800 they said it would cost to extradite her.

"Considering the age of the case and the relatively small amount of money" allegedly stolen, a case like Hull's isn't worth the expense, said Washoe County deputy district attorney Mike Mahaffey. Hull couldn't afford a trip back to Nevada to clear the warrant. Last June, a federal judge ruled that Hull was not a fugitive and ordered her disability payments resumed.<sup>3</sup> Still, Hull complained, for 2 1/2 years while her benefits were suspended she was treated as "guilty until proven innocent."

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<sup>2</sup>Sandy Bergo, *Hunt for Fugitives Expands to Retirees: A computer dragnet of aid recipients has caught felons, but in many cases the sick and poor lost their lifelines. Social Security rolls are next*, L.A. TIMES, Feb. 13, 2005, at A1, available at [http://www.urbanjustice.org/pdf/press/la\\_times\\_02\\_13\\_05.pdf](http://www.urbanjustice.org/pdf/press/la_times_02_13_05.pdf).

<sup>3</sup> See *Hull v. Barnhart*, 336 F. Supp. 2d 1113 (D. Or. 2004).

SSA's policy is a misguided, thoughtless attempt to implement a federal law that was intended to prevent fugitives from using their SSA benefits to fund their flights from justice. Specifically, that law states:

No person shall be considered an eligible individual or eligible spouse for purposes of this title with respect to any months if during such months the person is –

- (i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or
- (ii) violating a condition of probation or parole imposed under Federal or State law.<sup>4</sup>

SSA's implementation of this law is leaving thousands of retired and disabled people like Martin Hicks, Eric Aguilar and Edith Hull destitute and desperate. This report will first provide a brief history of the Social Security program and a short description of how difficult it is to win and then to live on Social Security benefits. We will then show that:

- SSA suspends the benefits of people who are not wanted by the police;
- SSA suspends the benefits of people who are not fleeing felons;
- SSA suspends the benefits of people who are not violating probation or parole;
- SSA's method of identifying people to suspend their benefits – by mindlessly matching names found in faulty databases – results in incorrect matches that can implicate victims of identity theft;
- The FFP disproportionately harms people with severe mental illness;
- Suspending the benefits of retired and disabled people who are not wanted by the police has tremendous financial and human costs and does not help the police catch fugitives;
- The FFP shifts more of the cost of caring for our nation's most vulnerable citizens from SSA to states and cities.

Finally, we will make recommendations about what Congress and SSA can do to end the suffering caused by the FFP.

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<sup>4</sup> 42 U.S.C. § 1382(e)(4)(A) (2007). *See also* 42 U.S.C. § 402(x) (2007).

## II. A Brief History Of The Social Security Program

The federal government provides benefits under two separate programs administered by SSA. The older program, known as the Old-Age, Survivors, and Disability Insurance program (OASDI), was originally proposed by Franklin D. Roosevelt and passed by Congress in 1935.<sup>5</sup> At first, benefits were available only for retired workers.<sup>6</sup> Through amendments made in 1956 and 1960, Congress expanded the program to provide benefits to workers who become disabled before retirement and to their dependents, called Social Security Disability Insurance (SSD).<sup>7</sup> Congress created the Supplemental Security Income (SSI) program in 1972<sup>8</sup> to provide benefits to a separate and more vulnerable group—needy individuals unable to work as a result of disability or advanced age.<sup>9</sup>

OASDI is for individuals who have worked or for their family members. The benefit amount depends on how much a wage earner paid into the Social Security system. SSI is for individuals who are disabled or elderly, have little or no work experience, and who are very poor. Their benefit amount is fixed. To qualify for SSI, an individual cannot have more than \$2,000 in resources and a married couple must have less than \$3,000.

These programs are vital to the well being of millions of Americans. As of December 2005, there were 48.4 million OASDI recipients,<sup>10</sup> and, as of March 2007, there were 7 million SSI recipients.<sup>11</sup> Access to benefits is especially important to SSI recipients because more than half of them have no other income.<sup>12</sup>

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<sup>5</sup> See Social Security Online: The Official Website of the U.S. Social Security Administration, *Historical Background and Development of Social Security*, March 2003, <http://www.ssa.gov/history/briefhistory3.html> [hereinafter *SSA History*].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> The program came into effect in October, 1974.

<sup>9</sup> See *SSA History*, *supra* note 5.

<sup>10</sup> Office of Policy, U.S. Social Security Administration, *Annual Statistical Supplement, 2006*, available at <http://www.ssa.gov/policy/docs/statcomps/supplement/2006/oasdi.html>.

<sup>11</sup> Office of Policy, U.S. Social Security Administration, *SSI Monthly Statistics, March 2007*, available at [http://www.ssa.gov/policy/docs/statcomps/ssi\\_monthly/2007-03/table02.html](http://www.ssa.gov/policy/docs/statcomps/ssi_monthly/2007-03/table02.html).

<sup>12</sup> Office of Policy, U.S. Social Security Administration, *SSI Annual Statistical Report, 2004*, available at [http://www.ssa.gov/policy/docs/statcomps/ssi\\_asr/2004/index.html](http://www.ssa.gov/policy/docs/statcomps/ssi_asr/2004/index.html).

### III. Social Security Income And Social Security Disability Insurance Are Difficult To Win, And The Amounts Are Meager

Winning SSI or SSD benefits is no small task. Applicants must prove they are severely disabled and that their disabilities will either persist for at least one year or result in death. They must obtain extensive medical evidence and be examined by SSA doctors. SSI applicants bear the additional burden of proving that they have very limited assets and income.

SSA makes the process even more arduous by denying most initial applications<sup>13</sup> and taking an extremely long time to process appeals. A recent editorial in the *New York Times* referred to the process as "unacceptable and inhumane," stating:

Processing delays . . . have left more than one million applicants languishing without help, some for years . . . The most acute bottlenecks are at the appeals level, where the average processing time is now 515 days . . . Such delays are especially pernicious because slightly more than one quarter of all claims are awarded after an appeal hearing, and nearly two-thirds of recipients who appeal ultimately prevail. Without the benefits they are entitled to, far too many applicants get sicker and experience severe economic hardship, including foreclosures and even homelessness. Some applicants die before their appeals are heard.<sup>14</sup>

The rewards for surviving the application ordeal are meager. In 2007, the average SSD payment is only \$979 per month.<sup>15</sup> The federal SSI payment for a single person in 2007 is only \$623 per month.<sup>16</sup> Some states provide a small supplement to SSI recipients. New York adds \$87 per month,<sup>17</sup> bringing the annual SSI income for a single New Yorker to only \$8,520, which is \$1,690 **below** the federal poverty line of \$10,210.<sup>18</sup>

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<sup>13</sup> In 2004, for example, SSA denied 63% of initial applications for SSI or SSD, but later granted benefits to 62% of the applicants who pursued appeals. See Empire Justice Center, *Disability Law News* at 15, Nov. 2005, available at <http://70.86.230.142/archive/newspublications/dapnews/2005/Nov.pdf>.

<sup>14</sup> Op-Ed, *To: The Temporarily Able-Bodied*, N.Y. TIMES, May 1, 2007, at A22.

<sup>15</sup> Press Office, U.S. Social Security Administration, *2007 Social Security Changes*, (last visited Sept., 26, 2007), available at <http://www.ssa.gov/pressoffice/factsheets/colafacts2007.htm>.

<sup>16</sup> Office of the Chief Actuary, U.S. Social Security Administration, *SSI Federal Payment Amounts*, (updated Oct. 18, 2006), available at <http://www.socialsecurity.gov/OACT/COLA/SSIAMts.html>.

<sup>17</sup> See *Supplemental Security Income (SSI) in New York*, SSA Publication No. 05-11146, (Jan. 2007), available at <http://www.ssa.gov/pubs/11146.pdf>. See also Neighborhood Legal Services, Inc., *SSI Rates Effective 1/1/2007*, available at <http://www.nls.org/ssirates2007.htm>.

<sup>18</sup> Annual Update of the Health & Human Services Poverty Guidelines, 72 Fed. Reg. 3147 (Jan. 24, 2007), available at <http://aspe.hhs.gov/poverty/07poverty.shtml>.

#### **IV. A Congressional Effort To Stop Fugitives Becomes A Social Security Administration Effort To Save Money By Cutting The Benefits Of Harmless People**

Despite their severe disabilities, the application ordeal, and the meager benefits, through thrift, grit and luck, many of our clients manage obtain benefits and support modest but independent lives. SSA's FFP carelessly and needlessly jeopardizes their achievements.

The FFP began as a Congressional effort to stop wanted fugitives from using government benefits to fund their flights from justice. In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which prohibits recipients who are fleeing to avoid prosecution or incarceration for a felony or who are violating probation or parole - so-called "fugitive felons"— from receiving a group of federal benefits, including SSI.<sup>19</sup> In 2004, as part of the Social Security Protection Act (SSPA), Congress extended the "fugitive felon" provision to the OASDI program, prohibiting them from receiving disability benefits and retirement benefits.<sup>20</sup> An individual can avoid being declared ineligible for benefits under the SSPA upon a showing of "good cause." Under the "mandatory good cause" exceptions, SSA may not deny or suspend benefits to a person who was implicated in the criminal offense because of identity fraud or in situations where the person was found not guilty, the charges were dismissed, or the warrant was vacated.<sup>21</sup>

Congress gave SSA authority to establish "discretionary good cause" exceptions if the underlying crime was non-violent, not drug-related and there are "mitigating factors" that point in favor of granting benefits.<sup>22</sup> SSA defined two "discretionary good cause" exceptions. The first allows benefits if a person shows that (i) he or she has not been convicted or pled guilty to another felony, and (ii) the law enforcement agency that issued the warrant reports that it is unwilling to act on it.<sup>23</sup> Under the second exception, benefits can be restored where (i) the recipient has not pled guilty or been convicted of another felony, (ii) the only warrant was issued more than 10 years prior to the date that SSA matched the warrant to its records, and (iii) the recipient is incapable of managing payments, is legally incompetent, or is residing in a nursing home or mental treatment facility.<sup>24</sup>

According to the legislative history, the 104<sup>th</sup> Congress passed these measures to prevent fugitives from using benefits to fund their flights from justice, and to enable police to apprehend wanted criminals.<sup>25</sup> SSA, however, has pursued a completely different goal: saving money. In 2003, SSA's Office of the Inspector General conducted an assessment of the FFP.<sup>26</sup> Not one word in the Executive Summary of the assessment concerns apprehending fugitives. Instead, it

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<sup>19</sup> See 42 U.S.C. § 1382(e)(4)(A).

<sup>20</sup> See 42 U.S.C. § 402(x).

<sup>21</sup> See 42 U.S.C. §§ 402(x)(1)(B)(iii), 1382(e)(4)(B).

<sup>22</sup> See 42 U.S.C. §§ 402(x)(1)(B)(iv), 1382(e)(4)(C).

<sup>23</sup> See U.S. Social Security Administration, *Program Operations Manual System* [hereinafter "POMS"], SI 00530.015 and GN 02613.930, available at <https://s044a90.ssa.gov/apps10/poms.nsf/partlist!OpenView> (follow hyperlinks for either "GN-General" or "SI – Supplemental Security Income") (last visited Sept. 26, 2007).

<sup>24</sup> *Id.*

<sup>25</sup> SCOTT SZYMENDERA & KATHLEEN S. SWENDIMAN, SOCIAL SECURITY ADMINISTRATION: SUSPENSION OF BENEFITS FOR FUGITIVE FELONS 4 (Congressional Research Service, Dec. 27, 2005), citing U.S. Congress, House Committee on Ways and Means, *Social Security Protection Act of 2003*, report to accompany H.R. 743, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 108-46 (Washington: GPO, 2003), pp. 23, 35.

<sup>26</sup> Office of the Inspector General, U.S. Social Security Administration, A-01-03-23070, ASSESSMENT OF THE SUPPLEMENTAL SECURITY INCOME FUGITIVE FELON PROJECT (Sept. 2003), available at <http://www.ssa.gov/oig/ADOBEPDF/A-01-03-23070.pdf>.

focuses exclusively on how much money SSA can save by suspending benefits and collecting overpayments more aggressively (about \$206.9 million).<sup>27</sup> The goal of the FFP, according to the assessment, is *not* to apprehend fugitives, but "to improve SSA's debt recovery performance and assist the Agency in its strategic objective to increase the percentage of outstanding debt."<sup>28</sup>

In addition to saving money by suspending the benefits of as many "fugitives" as possible, the assessment's authors are particularly concerned with the cost of recipients who manage to clear up their warrants and have their benefits restored. This, they explain at length, can be offset by forcing those recipients to repay benefits they received while the warrants were outstanding:

Of the \$1.4 million paid to fugitives, \$121,030 (8.6 percent) was discovered as a result of our audit. One reason for the undetected overpayments concerns the action SSA took once fugitives satisfied their warrants. Law enforcement agencies use the terms "rescinded" or "withdrawn" to indicate that warrants were satisfied. However, SSA staff may interpret this to mean that the warrants were nullified as if they never existed when in fact, the warrants were valid from the dates of issuance to the dates they were satisfied. For example, an SSI recipient in our sample had a warrant issued on February 29, 2000. SSA took administrative action in November 2002 to suspend SSI payments and assess overpayments for prior months incorrectly paid to the fugitive. On November 25, 2002, the individual satisfied her warrant . . . Because the overpayments were effectively deleted, SSA did not pursue recovery of the funds. However, our review of this case found that the individual's warrant was active from February 2000 to November 2002, and she was therefore ineligible for SSI payments. As a result of our audit, SSA reevaluated this case and assessed overpayments totaling \$14,874 that might otherwise have gone undetected.<sup>29</sup>

The assessment fails to explain how collecting \$14,874 from a disabled person living below the federal poverty level, who satisfied her warrant within only 25 days, served any law enforcement purpose.

To achieve its goal of saving as much money as possible, in July 2000, SSA began suspending the benefits of SSI recipients identified — by a crude computer-match — as having an outstanding warrant, probation or parole violation.<sup>30</sup> SSA instituted a similar policy for suspending OASDI benefits following passage of the SSPA.<sup>31</sup> As detailed below, using this "computer dragnet,"<sup>32</sup> SSA now suspends the benefits of retired and disabled people who are (a) **not** wanted, (b) **not** fleeing, (c) **not** violating probation or parole, and (d) often **not** even the correct recipients.

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<sup>27</sup> *Id* at i.

<sup>28</sup> *Id* at ii.

<sup>29</sup> *Id* at 8-9.

<sup>30</sup> See POMS SI-00530.010, *supra* note 25 (explicitly stating that existence of outstanding warrant is sufficient to make person ineligible for SSI, and that warrant need not state that the person is "fleeing" to avoid prosecution or incarceration).

<sup>31</sup> See POMS GN-02613.001, *supra* note 25 (providing that existence of warrant, without more, is enough to require suspension or denial of SSD benefits as well).

<sup>32</sup> Bergo, *supra* note 2.

## A. The Social Security Administration Suspends The Benefits Of People Who Are *Not* Wanted Fugitives

After identifying an alleged fugitive, SSA notifies the law enforcement agency that issued the warrant or violation. SSA allows law enforcement agencies 60 days to apprehend the individual based on leads it provides.<sup>33</sup> If the law enforcement agency does not act or responds that it is *not* interested in pursuing the recipient, SSA suspends the recipient's benefits.<sup>34</sup> In other words, the name "Fugitive Felon Program" is very misleading, because SSA in fact suspends the benefits of people who law enforcement agencies have decided not to pursue.

There are a number of reasons why the authorities would not be interested in pursuing every person with an active warrant. For example, ten, twenty, or thirty years may have passed since the warrant was issued. Or, the underlying offense may be relatively minor. In these situations, the authorities regularly decide that apprehending the alleged "fugitive" is more trouble than it is worth. Despite the fact that the agencies charged with enforcing the criminal law and maintaining public safety have determined that apprehending these people is not worthwhile, SSA summarily deprives them of critical benefits.

SSA's own statistics support the fact that apprehending fugitives is simply not the goal of the FFP. As of 2002, SSA's Office of Inspector General reported that the agency had identified 45,000 alleged fugitives who were receiving SSI.<sup>35</sup> Of that number, though, only about 5,000 (11%) were apprehended.<sup>36</sup> Statistics from 2006 show similar results. Since the inception of the program in 1996, SSA has identified more than 303,000 "fugitives" who were receiving benefits or acting as representative payees. As of June 2006, only about 41,500 (13.6%) had been arrested.<sup>37</sup> More importantly, all the arrests could have been made by simply providing information to the police. Suspending the benefits of 261,500 recipients who were not wanted had no positive effect on law enforcement.

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<sup>33</sup> POMS SI-0053.005(B)(2), *supra*, n. 25. See also U.S. GENERAL ACCOUNTING OFFICE, SOCIAL SECURITY ADMINISTRATION: FUGITIVE FELON PROGRAM COULD BENEFIT FROM BETTER USE OF TECHNOLOGY, GAO-02-346 at 39-40 (Sept. 2002) [hereinafter GAO REPORT].

<sup>34</sup> GAO REPORT, *supra* note 33, at 39-40.

<sup>35</sup> *Id.* at 8.

<sup>36</sup> *Id.*

<sup>37</sup> U.S. Social Security Administration, PERFORMANCE AND ACCOUNTABILITY REPORT FOR FISCAL YEAR 2006, at 41, available at [http://www.ssa.gov/finance/2006/FY06\\_PAR.pdf](http://www.ssa.gov/finance/2006/FY06_PAR.pdf).

## **B. The Social Security Administration Suspends The Benefits Of People Who Are Not Fleeing**

In 2000, SSA issued a regulation stating that a person would be ineligible for SSI benefits only when a court or other appropriate body made a finding that the person was fleeing to avoid prosecution or confinement or was violating probation or parole.<sup>38</sup> Because the legislative history of the PRWORA makes clear that Congress intended to prevent only “fleeing convicts or probation or parole violators” from receiving federal benefits, SSA’s regulations seemed in line with Congress’ intent.<sup>39</sup>

SSA, however, began suspending benefits regardless of whether the recipient was actually fleeing. This is a clear violation of the SSA’s own regulations, as well as of the PRWORA and the SSPA.<sup>40</sup> A person who is the subject of a felony warrant may not even know that he or she is facing criminal charges and so cannot possibly be “fleeing” from law enforcement. For example, in Tennessee, a court can issue a warrant based solely on a complaint from a civilian. A person who is the subject of such a warrant may not have had any contact with law enforcement or the courts, and would have no idea that a warrant for his or her arrest had been issued.

Even where a person has some contact with police, he may be unaware of charges filed against him. For example, Adam Thomas,\* an SSI recipient, was detained by Florida police on suspicion of a drug offense, but was released without being arrested or charged.<sup>41</sup> When he was released, Mr. Thomas left Florida and returned to his home state of Maine. After Mr. Thomas left the state, Florida charged him with a felony and issued a warrant for his arrest. However, Mr. Thomas had no idea about either the Florida charges or the related warrant, and therefore could not have been “fleeing” prosecution. Yet, SSA deemed him a “fugitive felon” and suspended his benefits.

Moreover, even if a recipient is aware of charges, failure to appear in court, which can result in a warrant, is not necessarily proof of flight from prosecution. Consider Walter Shepard,\* a former businessman and successful real estate broker, who experienced emotional problems following difficult life circumstances including the death of his first wife and a rough

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<sup>38</sup> 20 C.F.R. § 416.1339(b)(1), available at [http://www.ssa.gov/OP\\_Home/cfr20/416/416-1339.htm](http://www.ssa.gov/OP_Home/cfr20/416/416-1339.htm). The provision states:

(b) *Suspension effective date.* (1) Suspension of benefit payments because an individual is a fugitive as described in paragraph (a)(1) or (a)(2) of this section or a probation or parole violator as described in paragraph (a)(3) of this section is effective with the first day of whichever of the following months is earlier—

(i) The month in which a warrant or order for the individual's arrest or apprehension, an order requiring the individual's appearance before a court or other appropriate tribunal (e.g., a parole board), or similar order is issued by a court or other duly authorized tribunal on the basis of an appropriate finding that the individual—

(A) *Is fleeing, or has fled, to avoid prosecution* as described in paragraph (a)(1) of this section;

(B) *Is fleeing, or has fled, to avoid custody or confinement after conviction* as described in paragraph (a)(2) of this section;

(C) *Is violating, or has violated, a condition of his or her probation or parole* as described in paragraph (a)(3) of this section; or

(ii) The first month during which the individual fled to avoid such prosecution, fled to avoid such custody or confinement after conviction, or violated a condition of his or her probation or parole, if indicated in such warrant or order, or in a decision by a court or other appropriate tribunal (emphases added).

<sup>39</sup> See H.R. Rep. No. 104-651, at 1352-53 (1996).

<sup>40</sup> See POMS SI 00530.010, POMS GN 02613.001.

<sup>41</sup> See Thomas v. Barnhart, 2004 U.S. Dist. LEXIS 11608, 1-2 (D. Me. June 2004), *aff'd* 2004 U.S. Dist. LEXIS 15536 (D. Me. Aug. 2004).

divorce from his second wife. After suffering a breakdown, he began receiving disability benefits. In the ten years that followed, he continued to struggle with mental health problems and was hospitalized more times than he can remember. Due to an incident that occurred during one of his hospitalizations, he was arrested and charged with a felony. He was re-hospitalized shortly thereafter and could not appear in court on the adjourned date. Because he did not attend the court proceeding, a warrant was issued for his arrest. On the basis of that warrant, SSA improperly identified him as a “fugitive felon” and suspended his benefits. Clearly Mr. Shepard was not fleeing prosecution. When he was released from the hospital and returned to court, the judge vacated the warrant and excused his failure to appear. The case was ultimately dismissed.

Even if a recipient knows that an open warrant exists, this does not necessarily mean that the recipient is trying to flee. Where the warrant is issued by an out-of-state law enforcement agency (as it is in the overwhelming majority of cases), the subject of the warrant may not be able to return to the issuing jurisdiction to satisfy it. A recipient may be prevented by disability or financial situation from traveling. Robert Blakely found himself in that situation. While living in Montana, Mr. Blakely was involved in a fistfight, and, although the police investigated the fight, Mr. Blakely was not arrested.<sup>42</sup> After moving to Michigan, he learned that a warrant for his arrest had been issued in Montana. Eager to clear the matter up, but unable to return to Montana because of ill health and financial inability, Mr. Blakely contacted the Montana authorities and volunteered to return to Montana if they would pay for his travel or send a car to pick him up. Despite the fact that he was clearly not “fleeing” prosecution, SSA suspended his benefits.<sup>43</sup>

After working with clients with similar issues, advocates around the country brought legal challenges to SSA’s interpretation and enforcement of the “fleeing felon” provisions. Four federal district courts and one federal appellate court have ruled that SSA’s policy goes beyond the reach of the statutes passed by Congress.<sup>44</sup> Despite these decisions, SSA has refused to change its policy.

In December 2005, in the case of *Fowlkes v. Adamec*,<sup>45</sup> the United States Court of Appeals for the Second Circuit held that SSA’s suspension of benefits on the basis of a felony warrant, without any inquiry as to whether the recipient was actually “fleeing” prosecution or incarceration, was illegal. In the words of the Court,

[t]he statute does not permit the Commissioner to conclude simply from the fact that there is an outstanding warrant for a person’s arrest that he is ‘fleeing to avoid prosecution.’ 42 U.S.C. 1382(e)(4)(A). ‘Fleeing’ in § 1382(e)(4)(A) is understood to mean the conscious evasion of arrest or prosecution. See *Black’s Law Dictionary* 670 (8<sup>th</sup> ed. 2004) (defining ‘flight’ as ‘[t]he act or an instance of fleeing, esp. to evade arrest or prosecution’). Thus, there must be some evidence that the person knows his apprehension is sought. The statute’s use of the words ‘to avoid prosecution’ confirms that for ‘flight’ to result in a suspension of benefits, it must be undertaken with a specific intent, i.e., to avoid prosecution.<sup>46</sup>

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<sup>42</sup> See *Blakely v. Comm’r of Soc. Sec.*, 330 F. Supp. 2d 910 (W.D. Mich. 2004).

<sup>43</sup> *Id.* at 914. The court ordered SSA to reinstate Mr. Blakely’s benefits, finding that his inability to return to Montana did not support the determination that he was a fleeing felon.

<sup>44</sup> See *Garnes v. Barnhart*, 352 F. Supp. 2d 1059 (N.D. Cal. 2004); *Hull v. Barnhart*, 336 F. Supp. 2d 1113 (D. Or. 2004); *Blakely v. Comm’r of Soc. Sec.*, *supra* note 42; *Thomas v. Barnhart*, *supra* note 41; *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005).

<sup>45</sup> See *Fowlkes v. Adamec*, *supra* note 44.

<sup>46</sup> *Id.* at 96.

Following the *Fowlkes* decision, SSA announced that it would stop suspending or denying benefits on the basis of an outstanding felony warrant alone in New York, Vermont, and Connecticut (the states that comprise the Second Circuit),<sup>47</sup> but continue to enforce its policy in the other states.

### **C. The Social Security Administration Suspends The Benefits Of People Who Are Not Violating Probation Or Parole**

SSA's policy of suspending benefits on the basis of outstanding probation or parole warrants is incorrect for similar reasons. The existence of a probation or parole warrant is not the equivalent of a finding that a person has violated probation or parole. For example, SSA suspended the disability benefits of David Campbell\* because of an alleged probation warrant that it claimed was unresolved. Mr. Campbell, who is disabled because of the loss of sight in one eye and numerous other health problems, was arrested on a felony charge in New York City in 1995. He was sentenced to a short time in jail and to five years probation. In 1997, while still on probation, he was arrested and charged with the minor offense of trespassing and a violation of probation warrant was issued. When Mr. Campbell appeared in court less than a month later, the judge vacated the warrant. However, the court clerk failed to enter that information into the database. So, even though Mr. Campbell had successfully completed his probation, the data given to SSA showed that he had an outstanding probation warrant and, in 2006, his SSD was suspended. On December 28, 2006, the law firm of Proskauer Rose LLP, the National Senior Citizens Law Center, and MHP filed a lawsuit in the United States District Court for the Southern District of New York, *Clark v. Barnhart*, contending that this policy is unlawful.<sup>48</sup>

### **D. The Social Security Administration Suspends the Benefits of People Who Do Not Have Outstanding Warrants or Probation or Parole Violations Because Its Database Matching System Is Faulty**

Putting aside SSA's incorrect interpretation of the "fugitive felon" provisions, its program might be less harmful if it were more competently and carefully implemented. As it is, though, the database matching system SSA uses to identify ineligible people fails to function properly because so much information in the database is inaccurate.

To identify "fugitive felons," SSA collects warrant records from various law enforcement databases, including the Federal Bureau of Investigation's National Crime Information Center, United States Marshals Service and state and local law enforcement agencies. SSA then "runs" these records against its master files of Social Security number holders.<sup>49</sup> SSA makes matches based on a person's name, Social Security number, and date of birth.<sup>50</sup> Matches are considered to be "exact" when all four pieces of information are the same on the warrant and in the benefits rolls.<sup>51</sup> "Good" matches are those where only two or three pieces of information match.<sup>52</sup>

The addresses of people with "exact" matches with warrant data are sent to law enforcement agencies. SSA acknowledges that some additional investigation is necessary

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<sup>47</sup>Determining Whether an Individual is a Fugitive Felon Under the Social Security Act, 71 Fed. Reg. 17,551 (Apr. 6, 2006), available at [http://www.ssa.gov/OP\\_Home/rulings/ar/02/AR2006-01-ar-02.html](http://www.ssa.gov/OP_Home/rulings/ar/02/AR2006-01-ar-02.html).

<sup>48</sup> See *Clark v. Astrue*, 2007 U.S. Dist. LEXIS 18434 (March 2007) (Michael J. Astrue, current Commissioner of the Social Security Administration, was substituted for former Commissioner, Jo Anne B. Barnhart). Plaintiffs' motion for preliminary injunction was denied. Discovery has taken place, and final briefs from both sides are due in October 2007.

<sup>49</sup> GAO REPORT, *supra* note 33, at 12.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 38 n.19.

<sup>52</sup> *Id.*

because people who have violated the law often use aliases or assume false identities and, as a result, identification information in law enforcement databases, such as Social Security numbers, is often incorrect.<sup>53</sup> It is disturbing that even though SSA knows that its “exact” matches may not be inaccurate, it nonetheless suspends or denies benefits on the basis of matches that are merely “good.”<sup>54</sup> Often these “good” matches are inaccurate as well. SSA twice suspended the benefits of our client David Costello, claiming that he was the subject of outstanding warrants issued in Massachusetts. When we investigated, we found that the supposed match was obviously wrong: the person named in the warrant was a woman with a different Social Security number.

Inaccuracies in the database also make it unnecessarily difficult for recipients to restore their benefits by establishing that they qualify for a “good cause” exception. To maintain benefits, recipients must prove that they qualify for one of the “good cause” exceptions within 90 days of requesting an exception.<sup>55</sup> Even under the best circumstances, the process can take much longer than 90 days. Collecting information about the warrant and the underlying violation, establishing mistaken identity, arranging for the recipient to return to the jurisdiction to vacate the warrant, and obtaining the proper documents from law enforcement agencies usually involve numerous telephone calls and letters and the help of probation officers, public defenders, district attorneys, and judges.

To accomplish that in ninety days, recipients need complete and accurate information. The information SSA gives is neither. The notices often lack sufficient information about how to contact the law enforcement agency or even which agency to contact. For instance, a recipient in Kentucky with severe memory loss received a notice informing him of an outstanding warrant. The notice provided no address or telephone number for the law enforcement agency, but simply directed him to contact the “Summit Co. Sheriff’s Dept.” Fortunately this individual had an attorney who eventually discovered that the Summit County in question was in Ohio. In another case, the notice to a California resident indicated that the warrant was issued in “Orange Co So” and had no contact telephone number, and the address provided was in Pennsylvania. In fact, the warrant was issued in Florida.

SSA provides no information about the date of the underlying offense, where it was committed or what the charge was. The notices also do not advise recipients how to find more information about a warrant or how to get it resolved. In fact, SSA discourages recipients with outstanding warrants from coming into its field offices for assistance.<sup>56</sup> Furthermore, even though SSA suspends benefits based upon this faulty matching system, it requires recipients to provide substantial proof in order to have their benefits reinstated. For instance, a woman in Nevada had her retirement benefits suspended because of a 34-year-old warrant issued in New York City. The woman’s Social Security number was different from that of the person for whom the warrant was issued, and she is a white female while the warrant was for a black male. The only connection between the two is that they had similar—but not identical—names. They shared the same first and last names, but had completely different middle names. The Nevada woman was able to get a letter from the New York City Police Department stating that the Social Security numbers did not match and that the warrant was issued for a male. However, SSA

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<sup>53</sup> *Id.* at 14.

<sup>54</sup> *Id.* at 38.

<sup>55</sup> See POMS GN 02613.025(B)(3)(c).

<sup>56</sup> See POMS SI 00530.600. This provision instructs SSA staff to answer such individuals’ questions over the telephone “and thereby discourage the caller from coming into the office.” Settling such fact-intensive matters over the telephone, especially when paperwork, numerous official documents and multiple agencies are involved can be exceedingly difficult, if not impossible. See also Social Security Administration, Baltimore, Maryland and Council 220, American Federation of Government Employees, AFL-CIO, Case No. 98 FSIP 24 (May 29, 1998) (Release No. 409), available at <http://www.opm.gov/lmr/fsip/index98/agree.html>.

found the letter insufficient because the warrant had not been dismissed. The matter was ultimately resolved through the efforts of a legal services organization.

## **V. The Fugitive Felons Program Disproportionately Harms People With Severe Mental Illness**

While SSA's misguided policy harms recipients who are blind, physically disabled, mentally disabled, impoverished, and retired, it is particularly likely to harm recipients with severe mental illness. In an audit of the program, the Office of the Inspector General of SSA found that out of 180 cases sampled, nearly 60% of the recipients whose benefits were suspended because of outstanding warrants suffered from severe mental disabilities, including mental retardation and schizophrenia.<sup>57</sup> The Los Angeles County Public Defender's Office, in an informal survey of its clients who lost Social Security benefits because of Los Angeles County warrants, found an even higher percentage with severe mental impairments.<sup>58</sup>

During this era of "deinstitutionalization" (the closing of large public psychiatric institutions), recipients with mental illness have increasingly become caught in the criminal justice system. According to a report by the Council on State Governments, rates of mental illness among incarcerated individuals are "at least three to four times higher than the rates of severe mental illness in the general population."<sup>59</sup> More than half the individuals incarcerated in jails and prisons have a mental health problem.<sup>60</sup> In 2002, 35% of the SSI recipients were disabled due to mental illness.<sup>61</sup> In light of the nexus between mental illness, reliance on federal benefits, and exposure to the criminal justice system, recipients with severe mental health problems are especially vulnerable to the FFP.

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<sup>57</sup> ASSESSMENT OF THE SUPPLEMENTAL SECURITY INCOME FUGITIVE FELON PROJECT, *supra* note 26, at 7 n.20.

<sup>58</sup> Gerald McIntyre, *Have You Seen a Fleeing Felon? Social Security Administration Targets SSI Recipients with Outstanding Warrants*, 36 CLEARINGHOUSE REVIEW: JOURNAL OF POVERTY LAW & POLICY 474, 475 (Jan.-Feb. 2003), available at [http://www.lanecountylegalservices.org/Have\\_you\\_seen\\_a\\_fleeing\\_felon.pdf](http://www.lanecountylegalservices.org/Have_you_seen_a_fleeing_felon.pdf).

<sup>59</sup> Council of State Governments, *Criminal Justice/Mental Health Consensus Project Report* (June 2002), available at [http://consensusproject.org/the\\_report/toc/executive-summary](http://consensusproject.org/the_report/toc/executive-summary).

See generally URBAN JUSTICE CENTER, PRISONS AND JAILS: HOSPITALS OF LAST RESORT (1999); URBAN JUSTICE CENTER, POLICE INTERACTIONS WITH INDIVIDUALS IN PSYCHIATRIC CRISIS, (Apr. 2002), both available at <http://www.urbanjustice.org/ujc/publications/mental.html>.

<sup>60</sup> Bureau of Justice Statistics, U.S. Dept. of Justice, *Mental Health Problems of Prison and Jail Inmates*, NCJ 213600, 1 (Sept. 2006; revised Dec. 14, 2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/mhppji.pdf>.

<sup>61</sup> Kathryn J. Lewis, *Income Injustice: The Impact of Welfare Reform's Fleeing Felon Regulations on SSI Recipients*, (Center on Juv. & Crim. Just., S.F., Cal.), June 2002, at 9, available at [http://www.cjcj.org/pdf/welfare\\_reform.pdf](http://www.cjcj.org/pdf/welfare_reform.pdf).

## VI. The Fugitive Felon Program Shifts The Cost Of Caring For Vulnerable Citizens From The Social Security Administration To States And Cities

According to SSA, the FFP creates significant savings. SSA asserts that between August 1996 and February 2003, discontinuance or denial of benefits under the program saved about \$83.4 million.<sup>62</sup> This number is misleading because it represents the gross savings from the program, not the net cost. SSA does not publish, or even track, the net cost of implementing the program.<sup>63</sup>

To begin to understand the net cost of the FFP, we will examine the case of Linda, a typical SSI recipient with mental illness in New York City.<sup>64</sup> In 2007, Linda's SSI benefits were suspended due to the FFP. During 2007, the annual savings in SSI to the federal government will be \$7,476 (\$623 over 12 months), and to New York State from its supplement will be \$1,044 (\$87 over 12 months). The gross savings of benefits not paid is \$8,520.

The financial cost of suspending Linda's benefits, however, will be significant. Linda will probably lose her apartment and become homeless. The provision of basic services (e.g., emergency room visits, hospitalizations, homeless shelters, etc.) to the average homeless person in New York City costs about \$40,000 per year.<sup>65</sup> If the cost of keeping Linda homeless is average, there will be a net cost of SSA's decision to suspend her of \$31,480.<sup>66</sup> Due to her psychiatric disability, however, providing basic services to Linda will probably cost more than \$40,000. Her health will probably deteriorate, requiring intermittent hospitalizations costing about \$1,200 per night.<sup>67</sup> If she becomes one of the many homeless people with mental illness caught in the criminal justice system and incarcerated, her stay in a city jail will cost about \$165 per night.<sup>68</sup> These costs will be borne largely by New York State and New York City, not by SSA.

In addition to these direct financial costs, the FFP may also use scarce resources in the criminal justice system. To restore benefits, a recipient suspended under the FFP must contact the jurisdiction that issued the warrant and try to have it vacated. Because vacating a warrant is usually done through a judicial proceeding, judges, district attorneys, public defenders, and probation or parole officers are spending time and resources on useless proceedings to vacate warrants issued against people who police no longer want to apprehend. Their efforts would be better spent processing the cases of people who are actually wanted by the police.

Thus, while the FFP may save SSA money, it costs taxpayers and wastes the resources of the criminal justice system. If SSA's goal is to spend less money on our nation's poor, retired, and disabled, the correct approach would be to continue their benefits, not suspend them, so

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<sup>62</sup> ASSESSMENT OF THE SUPPLEMENTAL SECURITY INCOME FUGITIVE FELON PROJECT, *supra* note 26, at 6.

<sup>63</sup> GAO REPORT, *supra* note 33, at 17.

<sup>64</sup> "Linda" is a hypothetical SSI beneficiary, drawn from the authors' experience representing many recipients.

<sup>65</sup> Dennis P. Culhane, Stephen Metraux & Trevor Hadley, *Public Service Reductions Associated With Placement Of Homeless Persons With Severe Mental Illness In Supportive Housing*, HOUSING POLICY DEBATE, VOL. 13, No. 1 (Fannie Mae Foundation), 2002, at 107 available at [http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd\\_1301\\_culhane.pdf](http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd_1301_culhane.pdf).

<sup>66</sup> I.e., for the government to finance the annual SSI income for an individual (\$8,520) is \$31,480 less costly than financing the cost of services for the average homeless person in New York City per year (\$40,000).

<sup>67</sup> New York City Dept. of Health and Mental Hygiene, Division of Mental Hygiene, Housing Services, *Mission and Background*, available at <http://www.nyc.gov/html/doh/html/dmh/dmh-housing.shtml>.

<sup>68</sup> *Id.* See also THE PARTNERSHIP TO END LONG-TERM HOMELESSNESS, COSTS OF SERVING HOMELESS PEOPLE IN NINE CITIES, at 4 (Nov. 2004), available at [http://documents.csh.org/documents/ke/csh\\_lewin2004.pdf](http://documents.csh.org/documents/ke/csh_lewin2004.pdf).

that they can stay out of costly jails, hospitals, shelters, and our country's backlogged criminal courts.

Of course, the mission of SSA, as President Roosevelt envisioned it, is not to save money. It is to enhance our nation's social security by providing for people in need. Judged by SSA's true mission, the FFP is a miserable failure.

## **VII. Recommendations**

The only legitimate public safety concern behind the FFP could be achieved by simply permitting SSA to share information regarding recipients' whereabouts with law enforcement agencies. Congress should repeal the sections of the PRWORA and SSPA that make people ineligible for benefits. Until that happens, we make the following recommendations:

### **A. The Social Security Administration Should Follow the Law and Suspend Benefits Only If People Are Actually Fleeing From Justice**

Instead of arbitrarily limiting it to residents of New York, Connecticut, and Vermont, SSA should apply the acquiescence ruling made pursuant to *Fowlkes v. Adamec* to all recipients and suspend benefits only when a court or other appropriate body has found that a recipient was fleeing to avoid prosecution or confinement or was violating probation or parole.

### **B. The Social Security Administration Should Refine Its Data-Matching System To Guard Against Mistakes And Identity Theft**

Because the consequences of a mistake or of identity theft are so dire, SSA personnel should double-check each potential match carefully before taking any action. SSA should also make sure that the warrant information in its notices is correct, and include more information in its suspension notices so that victims of identity theft and mistaken identity can clear the matter up more quickly.

### **C. The Social Security Administration Should Help People Obtain Information About Alleged Warrants/Violations**

Currently, dealing with an FFP suspension is difficult even for seasoned legal services lawyers. For unrepresented disabled and retired people, it is even more so. They must deal with law enforcement agencies and courts in far away places in addition to SSA's own bureaucracy, and do so without the benefits they depend on. SSA should accommodate disabled and retired recipients and help them through this difficult process. SSA could accomplish this by obtaining and conveying to the recipient specific information regarding the warrant and the underlying charges, as well as the basis for issuing the warrant. SSA, at a minimum, should provide the recipient with a copy of the warrant, a telephone number and address for the court clerk, and contact information for local public defender and assigned counsel services.