



National Senior Citizens Law Center

PROTECTING THE RIGHTS OF LOW-INCOME OLDER ADULTS

ADVOCATE GUIDE:

Understanding the *Martinez Settlement*

SEPTEMBER 2010

A Large Type Version of This Guide Can Be Found at www.NSCLC.org

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INTRODUCTION

The settlement of the class action lawsuit *Martinez v. Astrue* ended the Social Security Administration's policy of denying or suspending benefits for "fleeing to avoid prosecution," based solely on the existence of an outstanding felony arrest warrant. In addition to abandoning the illegal policy, SSA agreed to repay \$700 million in benefits that were unlawfully withheld from 80,000 people whose benefits have been suspended or denied since January 1, 2007. People whose benefits were suspended or denied between 2000 and 2006 will be notified of the change in policy and given a chance to re-establish eligibility retroactive to April, 2009. All told, over 200,000 people will benefit from the settlement.

This document provides guidance to advocates helping class members claim the full benefits they are due under the settlement. The guide contains background information on the challenged policy and the lawsuit, a summary of the provisions of the settlement, advice for advocates on assisting clients and answers to frequently asked questions.

As implementation of the settlement unfolds, new information will become available. NSCLC will post updates to this guide on our website at www.nsclc.org/areas/social-security-ssi/Martinez-Settlement.

The guide is intended for advocates and may not be suitable for use by class members or individuals not accustomed to helping people with Social Security or Supplemental Security Income (SSI) problems. Potential class members who need assistance should secure local legal counsel. NSCLC cannot provide direct representation to individuals seeking benefits under the settlement.

Advocates may also be interested in joining NSCLC's *Martinez* Settlement Listserv. Members of the listserv receive the latest information about the implementation of the *Martinez* Settlement and discuss with other advocates strategies for serving class members. This listserv is for advocates only. Membership is screened. To sign up, visit www.nsclc.org/join.

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Additional funds are still needed. To assist with this effort, go to: www.nsclc.org.



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Section 1: Background on the “Fleeing Felon” Rule

The “Fleeing Felon” Law

The *Martinez* lawsuit challenged the Social Security Administration’s policy interpreting provisions in the Social Security Act that came to be known as the “fleeing felon” provisions.¹ The “fleeing felon” provisions make ineligible for benefits anyone who is 1) “fleeing to avoid prosecution” for a felony, 2) “fleeing to avoid ... custody or confinement after conviction” for a felony, or 3) “violating a condition of probation or parole” for any offense.² (Denials based on warrants for alleged violations of probation or parole conditions are not part of *Martinez*; see page 18 for more information.)

The provision first appeared as part of the 1996 welfare reform legislation and was originally applied to the SSI program.³ The Social Security Protection Act of 2004, extended application of the provision to the Old Age, Survivors and Disability Insurance (OASDI) program, effective January 1, 2005, and to anyone serving or seeking to serve as a representative payee for an SSI or Title II beneficiary.⁴

In 2000, SSA issued final implementing regulations for the SSI program stating that it would deny or suspend benefits only “on the basis of an appropriate finding” that an individual “[i]s fleeing, or has fled, to avoid prosecution” or “is fleeing, or has fled to avoid, custody or confinement after conviction” for a felony.⁵ In 2005, to implement the Social Security Protection Act, SSA issued proposed regulations that simply adopted existing agency practice described in more detail below.⁶ However, the U.S. Court of Appeals issued its decision in *Fowlkes v. Adamec*,⁷ 432 F.3d 90 (2nd Cir. 2005) the following day and final regulations were never issued.

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- [1] For a more detailed description of the background to the lawsuit, see “Social Security Administration Retreats from Unknowing Flight Doctrine and Will Pay Hundreds of Millions in Back Benefits,” *Clearinghouse Review Journal of Poverty Law and Policy* (Jan.-Feb. 2010).
 - [2] Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified at 42 U.S.C. § 1382(e)(4)(A)); see also 42 U.S.C. §§ 402(x)(1)(A)(iv) (OASDI) and 1004(a)(2) (Special Veterans Benefits).
 - [3] Similar provisions apply to the food stamp, Temporary Assistance for Needy Families (TANF) programs and to programs administered by the Department of Veterans Affairs. The application of the provision to those programs was not challenged in the *Martinez* case.
 - [4] Pub. L. No. 108-203, Sections 103, 203, 118 Stat. 493 (2004).
 - [5] 20 C.F.R. § 416.1339(b); id. § 408.810(b) (2009).
 - [6] 70 Fed. Reg. 72411 (Dec. 5, 2005).
 - [7] See, p. 6, *infra*.



SSA's Illegal Implementation

Despite clear statutory and regulatory language limiting the penalty to those who are actually “fleeing,” SSA established a *de facto* policy to deny and suspend benefits on the sole basis that an individual was the subject of an outstanding felony warrant—even if the individual did not know of the warrant or the underlying charges. Benefits were suspended or denied without a finding that the individual was in fact fleeing.

Tens of thousands of older adults and individuals with disabilities lost benefits each year under the policy. Caught in the dragnet were individuals who had no knowledge that charges had been filed against them, individuals who were charged for minor offenses like bounced checks and individuals who were unlucky enough to have the same first and last name and date of birth as someone who was the subject of an outstanding warrant.

Legal Challenges to SSA's Policy

There were a number of legal challenges to SSA's policy. In each case, the court found that the statutory language does not allow suspension of benefits based solely on the existence of an arrest warrant.⁸ Most of these cases were at the district court level and were brought as individual appeals. They did not provide relief to anyone other than the individual beneficiary involved in the case.

One case, *Fowlkes v. Adamec*, 432 F.3d 90 (2nd Cir. 2005) made it to the U.S. Court of Appeals for the Second Circuit where the court ruled against SSA. As with the other cases, the Fowlkes case was not a class action. In response to the court's decision, the SSA changed its policy only as to beneficiaries in Connecticut, New York and Vermont – the states that comprise the Second Circuit.⁹ For more information on how the settlement impacts Second Circuit beneficiaries see the box on page 27.

The Martinez Case

In October, 2008, plaintiffs filed a proposed class action lawsuit in federal court in the Northern District of California, challenging SSA's implementation of the “fleeing to avoid” portion of the statutes solely on the basis of an outstanding felony arrest warrant. The case did not challenge SSA's implementation of the probation or parole violation portion of the statute because that part of the statute did not contain a “fleeing” component. A separate lawsuit was filed on that issue and

[8] *Blakely v. Commissioner*, 330 F.Supp.2d 910 (W.D. Mich. S.Div. 2004); *Hull v. Barnhart*, 336 F.Supp.2d 1113 (D. Or. 2004); *Garnes v. Barnhart*, 352 F.Supp.2d 1059 (N.D. Cal. 2004); *Thomas v. Barnhart*, 2004 WL 1529280 (D. Me. 6/24/04), aff'd 2004 WL 1770151.

[9] Social Security Acquiescence Ruling 06-1(2), 71 Fed. Reg. 17551 (Apr. 6, 2006); see also Congressional Research Service, “Social Security Administration: Suspension of Benefits for Fugitive Felons and the Agency's Response to the *Fowlkes* Decision,” (April 27, 2006) (outlining the legislative and regulatory history and describing the *Fowlkes* opinion and the acquiescence ruling), <http://wikileaks.org/leak/crs/RL33394.pdf>.



the U.S. Court of Appeals has recently ruled that SSA's policy on probation and parole violations is also unlawful. *Clark v. Astrue*, 602F.3d 140 (2nd Cir. 2010). The case has been remanded to the district court, which will be responsible for determining the relief and for determining whether a class should be certified. See page 18 for more information.

The plaintiffs in *Martinez* were represented by the National Senior Citizens Law Center, along with pro bono counsel from the law firm of Munger, Tolles & Olson, the Mental Health Project of the Urban Justice Center, Disability Rights California, and the Legal Aid Society of San Mateo County.

After extensive briefing and several months of negotiation, the parties reached a settlement that changed the policy immediately for all new and pending claims effective April 1, 2009 while restoring benefits and providing retroactive relief to hundreds of thousands of individuals who had lost benefits under the old policy. The settlement was approved by the court in September, 2009 and became effective in late November, 2009. Section 2 of this guide provides details of the settlement provisions.

Veterans Get Worse Treatment

In 2001 Congress enacted a slightly different version of the “fugitive felon” penalty that applied to several programs administered by the U.S. Department of Veterans Affairs (VA). 38 U.S.C. § 5313B. As with the Social Security Act provisions, this provision provides that a veteran will not receive certain benefits if the veteran is “fleeing to avoid prosecution” for a felony or is violating a condition of probation or parole, although, unlike the Social Security Act, the probation or parole portion of the VA statute applies only if the underlying offense was a felony.

The VA followed the example of SSA and began a data matching program and cut off benefits whenever they were able to match a veteran with any outstanding warrant for a felony. However the penalty provision for veterans applies not just to cash benefits. It cuts off health care, rehabilitation services and educational benefits as well. Even worse, benefits for all auxiliary beneficiaries, including spouses and small children, are also cut off if the veteran has an outstanding warrant.

The National Senior Citizens Law Center would like to bring this policy to an end and is interested in hearing from advocates who represent veterans seeking to challenge the loss of their benefits under the VA policy. Please contact Gerald McIntyre, gmcintyre@nslc.org or Anna Rich, arich@nslc.org.



Basics: Income Support Programs Administered by SSA

The **Old Age, Survivors and Disability Insurance (OASDI)** program provides monthly benefits to individuals who paid Social Security taxes while working and are now retired or no longer able to work because of a disability. The spouse, widow(er) or dependant child of an eligible individual can also receive benefits based on the individual's record. The amount of benefits individuals receive depends on their earnings record and, for retirement benefits, the age at which they choose to begin receiving benefits. The program is not means tested.

Most recipients of retirement benefits are also entitled to Medicare. Recipients of disability benefits are entitled to Medicare twenty-four months after their entitlement to cash benefits begins.

The OASDI program is sometimes referred to as "Social Security," or Title II.

The **Supplemental Security Income (SSI)** program provides income support to individuals 65 and over and individuals with disabilities. The program is means tested. Individuals can only qualify to receive benefits if they have limited income and resources.

To be eligible for benefits an individual's income cannot exceed the SSI rate. The SSI rate varies by state since states have the option of supplementing the federal rate. In addition, an eligible individual's resources may not exceed the federal limit of \$2,000 for an individual and \$3,000 for a couple. Eligible individuals receive cash benefits equal to the difference between the SSI rate in their state and their other countable income.

In most states, SSI recipients are automatically entitled to Medicaid. Individuals who receive only SSI (i.e. no OASDI benefits) do not qualify for Medicare.

The SSI program is sometimes referred to as Title XVI. Visit the SSA website for more: www.ssa.gov/ssi/text-understanding-ssi.htm

Special Veterans Benefits (SVB) are paid to certain World War II veterans including those who served in the U.S. military from September 16, 1940 through July 24, 1947 as well as certain Filipino veterans who served in the military of the Philippines between July 26, 1941 and December 30, 1946. Benefits are paid for months that eligible individuals are living outside the United States. The program is means tested and the amount of benefits paid is equal to 75% of the SSI Federal Benefit Rate minus any other countable income received by the individual. Most of the people receiving benefits under this program reside in the Philippines although there are a good number of veterans in Puerto Rico who also should be eligible.

Special Veterans Benefits are not the same as the Veterans Benefits that are paid out by the Veteran Benefits Administration at the Department of Veterans Affairs.

Visit the SSA website for more information: www.ssa.gov/pubs/10157.html



Section 2: The *Martinez* Settlement

The *Martinez* settlement changes SSA's illegal policy and provides prospective and retroactive relief to individuals who lost benefits under that policy.

New Policy for Outstanding Felony Warrants

As part of the *Martinez* settlement, SSA agreed that it would not automatically deny or suspend benefits, or deny or suspend status as a representative payee, solely on the basis of an outstanding warrant for the applicant, beneficiary, or representative payee, unless the warrant charged escape or flight. The change in policy was first released in Emergency Messages (EM) 09024 (Mar. 31, 2009) and 09025 (April 1, 2009).¹⁰ SSA decisions since April 1, 2009 should have been made in accordance with the changed policy.¹¹

SSA may still use all warrant information when it decides whether a person is suitable to serve as a representative payee.¹²

People who have an outstanding warrant for an alleged violation of a condition of **probation or parole** may still have their benefits denied or suspended because of these warrants. These individuals were **not part of the *Martinez* case**, since the legal issues are different. Their claims are currently being litigated in *Clark v. Astrue*, 602F.3d 140 (2nd Cir. 2010) in which the Second Circuit recently reversed a New York district court judgment, which had upheld the SSA policy. See page 18 for tips on determining whether your client is in the *Martinez* class, or in the class proposed in *Clark*.

[10] See Attachment A.

[11] SSA intends to incorporate the new policy in the Program Operation Manual System (POMS) and ultimately in new regulations. The first installment of the *Martinez* POMS, dealing primarily with Title II, was released in December. GN 02613 TN 9.

[12] See POMS GN 00502.132. SSA cannot use an outstanding warrant to automatically disqualify someone from serving as a representative payee unless the warrant is for one of the three codes described on page 10 *infra*, for escape, flight to avoid, and flight-escape.



Exception to the New Policy: Warrants for Escape, Flight to Avoid, and Flight-Escape

A few types of warrants will still result in the automatic suspension or denial of benefits. Individuals who have an outstanding felony warrant for one of three National Crime Information Center felony offense codes, “escape” (4901); “flight to avoid” (prosecution, confinement, etc.) (4902); and “flight-escape” (4999), will continue to have their benefits suspended or denied. These charges are a tiny percentage of all warrants issues, just three of the 424 types of warrants listed by the National Crime Information Center.

Important – Although individuals whose benefits are suspended or denied because of a warrant with one of these three NCIC codes are not entitled to relief under *Martinez*, the *Martinez* settlement does not preclude them from challenging a suspension or denial in an individual case **if** the challenged action took place on or after September 24, 2009.

Retroactive Relief

The amount and timing of retroactive relief (payment of back benefits that were previously denied or suspended due to SSA’s old fleeing-felon policy) and the procedure for obtaining relief vary, depending on the timing of the initial suspension, denial or appeal thereof, and the type of benefits involved.

All payments are subject to the Social Security Act’s regular payment, nonpayment, and reduced payment rules.

For purposes of explaining the settlement, we have broken the class into three groups.¹³

Group 1: Benefits Previously Suspended, May Receive Full Retroactive Relief

Who is in Group 1?

Group 1 consists of *Martinez* class members who were receiving benefits and whose benefits were:

- Suspended on or after Jan. 1, 2007; OR
- Suspended prior to Jan. 1, 2007 AND had an administrative appeal of the suspension pending on or after Jan. 1, 2007, including those who received a decision sometime after January 1, 2007 and those who never received any decision.

[13] We have broken the class into these groups to simplify our description of the relief available to *Martinez* class members. However, SSA does not describe the groups in this way. People in what we describe as Groups 1 & 2 are what SSA describes as post-2006 class members, while those we describe as Group 3 are what SSA describes as pre-2007 class members.



What will Group 1 get?

Most individuals in Group 1 will receive full retroactive benefits for the period during which their benefits were suspended pursuant to the challenged policy.

What must Group 1 do to get relief?

The process for receiving relief depends on what type of benefits the individual was receiving.

- Social Security beneficiaries should have already been automatically reinstated. They should not have to visit a Social Security office.
- **Important** – A Social Security beneficiary in Group 1 who has not yet been reinstated and has not received full retroactive relief should contact their Social Security office asap and if the matter is not promptly resolved should seek legal counsel.
- SSI recipients are receiving letters telling them that they need to provide information to confirm their continued financial eligibility for the months in which benefits were suspended. The letter will contain a date and time for an appointment with SSA and a list of documents to bring to the appointment. If the recipient cannot make the scheduled appointment, they can call to re-schedule, but must do so within 60 days of the date on the letter.
 - If they respond after the 60 day timeframe has passed, SSA field offices are instructed to consider granting good cause for not responding sooner based on new *or* material evidence¹⁴ as opposed to the more stringent standard of new *and* material evidence.
- For both Social Security and SSI recipients, all overpayment collections will automatically stop and any overpayments already recovered will be refunded.
- Nobody in Group 1 should have to file a new application or undergo a disability determination prior to reinstatement.

Group 2: Application for Benefits Previously Denied, May Receive Full Retroactive Relief

Who is in Group 2?

Group 2 consists of *Martinez* class members who were not receiving benefits and who were:

- Denied payment of benefits on or after Jan. 1, 2007; OR
- Denied payment of benefits prior to Jan. 1, 2007 AND had an administrative appeal of the denial pending on or after Jan. 1, 2007, including those who received a decision

[14] See POMS GN 02613.875.A.3.e



sometime after January 1, 2007 and those who never received any decision.

What will Group 2 get?

Individuals in Group 2 are potentially eligible for full retroactive benefits back to the date they would have begun receiving benefits if their application had not been denied.

What must Group 2 do to get relief?

The process for receiving relief depends on what type of benefits the individual would have received.

- Social Security benefits applicants should have had all other aspects of their claim fully developed before being told that benefits could not be paid because of the warrant. They should by now have received full retroactive benefits back to the date from which benefits should have been paid based on their original date of application. As with Group 1, this is generally expected to be an automated process.
- Applicants for SSI benefits will get the same letter that SSI recipients in Group 1 will receive and must respond within 60 days of the date on the letter.
 - If they respond after the 60 day timeframe has passed, SSA field offices are instructed to consider granting good cause for not responding sooner based on new *or* material evidence¹⁵ as opposed to the more stringent standard of new *and* material evidence.
- SSI applicants were likely denied benefits before other aspects of their SSI eligibility were developed. Before getting relief under *Martinez*, these applicants will therefore have to establish that they meet all other eligibility requirements—including a disability determination for those under age 65 at the time of application. Once determined eligible, however, they will receive full retroactive payments from the first of the month after the original date of application.
 - In the event that a Group 2 class member was determined to be disabled in connection with the earlier SSI application, SSA will not require a new disability determination before paying retroactive benefits.
 - Some Group 2 class members applied for concurrent SSI and OASDI benefits. They should have had a disability determination in conjunction with their OASDI application and will not need to undergo a new disability determination for OASDI or SSI purposes.

[15] See POMS GN 02613.875.A.3.e.



Group 3: Must Reapply for or Request Reinstatement of Benefits, Relief Available Back to April 1, 2009

Who is in Group 3?

Group 3 consists of *Martinez* class members whose benefits were:

- Suspended or denied on or after January 1, 2000 and before January 1, 2007; AND
- Did not have an administrative appeal pending on or after January 1, 2007.

What will Group 3 get?

The relief available to this group is more limited, but still significant. Individuals in Group 3 who reestablish eligibility will get retroactive coverage back to April 1, 2009 (provided they meet the deadline discussed below). They will not get full retroactive relief.

For members of Group 3 who had already managed to get their benefits restored, SSA will stop collecting any overpayment based on alleged flight but will not refund previously withheld alleged overpayments. If their benefits were restored with an effective date subsequent to April 1, 2009, they should also receive retroactive relief for the period between April 1, 2009 and the effective date of their benefit restoration.

What must Group 3 do to get relief?

Group 3 class members will receive a notice from SSA advising of the change in policy and inviting them to reapply for benefits. Those who reapply and are found to be otherwise eligible will receive a protective filing date of April 1, 2009. This will mean at least an extra year and a half of retroactive benefits for most of them.

IMPORTANT!

Individuals in Group 3 must contact SSA within six months of the date on the notice from SSA in order to benefit from the April 1, 2009 protective filing date and get back benefits. These notices will be mailed to claimants' last known address.

See page 24 for important information about making sure that *Martinez* class members who ought to be in Group 1 or Group 2 are not improperly identified as Group 3 by SSA.



All Groups: Expected Timeline for Relief

Social Security beneficiaries in Groups 1 and 2 began receiving notices¹⁶ in mid-December, 2009, and benefits should have resumed between December, 2009 and the second quarter of 2010. They should have received retroactive benefits owed when payment of benefits resumed.

Many SSI and SVB recipients in Groups 1 and 2 will have to wait somewhat longer for relief. These class members should receive their notice¹⁷ between June and December, 2010 and, if they are still financially eligible, their benefits should resume in that same time period, unless a disability determination is required. If they applied for benefits on the basis of disability and SSA did not make a disability determination at the time of application, a determination will be required before benefits can start. They will receive retroactive benefits owed when payment of benefits resumes.

Social Security beneficiaries in Group 3 whose benefits were suspended can expect to receive an informational notice¹⁸ by December 2010, inviting them to request reinstatement of their benefits within six months of the date on the notice in order to obtain the April 1, 2009 protective filing date. SSA will stop collecting overpayments after sending the informational notice. See page 20 below for strategies for getting overpayments stopped as soon as possible.

Finally, *SSI and SVB recipients in Group 3* whose benefits were suspended or denied should receive an informational notice¹⁹ by December, 2010 advising them of the change in policy and inviting them to file a new application within 6 months of the date on the notice in order to obtain an April 1, 2009 protective filing date. SSA will stop collecting overpayments after sending the informational notice. See page 20 below for strategies for getting overpayments stopped as soon as possible.

These time frames are subject to change by SSA. If the National Senior Citizens Law Center learns of any significant changes to these time frames, we will post the new information on our website, www.nslc.org/areas/social-security-ssi/Martinez-Settlement.

SSA's Implementation of the Settlement Agreement

The agreement requires SSA to develop internal policies and procedures for effectuating the terms of the agreement.

[16] A sample of the notice sent out to Title II beneficiaries in December can be found at POMS GN 02613.865D, and in Attachment B.

[17] See Attachment C.

[18] A Sample of the notice sent out to Title II beneficiaries in December can be found at POMS GN 02613.869, and in Attachment D.

[19] See Attachment A.



Instructions to Regional and Local Offices

SSA has provided to regional and local offices instructions regarding the *Martinez* settlement. Instructions are found in Emergency Messages and the POMS.

Emergency Message (EM) 09025 informed local offices that effective April 1, 2009, the old policy would be replaced by the new policy found in the settlement agreement.²⁰ The EM makes clear that the sole existence of an outstanding felony arrest warrant can no longer be used to suspend or deny benefits unless the warrant was for one of the three NCIC codes identified in the settlement agreement.

The POMS provides further details to field offices about how to implement the elements of the settlement described above. The relevant POMS sections are currently found at GN 02613.860-885. POMS sections GN 00502.132-133 and GN 00504.102 detail new procedures for handling representative payee applicants under the new policy. More POMS are expected as implementation continues.

When an individual contacts a field office and asks about eligibility for Martinez relief, SSA field offices are instructed to submit a query to an internal database. Right now the database only contains information about post-2006 class members (Groups 1 & 2). Information about pre-2007 class members (Group3) will be added at a later date. If the individual is not in the internal database, field office staff are instructed to record the beneficiary's name, SSN, current address and phone number for future, though currently unidentified, follow-up. Staff are instructed to then make an initial determination about potential Martinez eligibility by checking a separate database to see whether the beneficiary's warrant code offense is not one of those exempted from the settlement (flight or escape, probation or parole, etc.). Staff at the 800 number are instructed to give only general information to inquiring class members, but if the caller persists they are required to create and send to the field office a manual worksheet which the field office is then required to treat as an inquiry. We have heard from advocates that persistence is necessary to get information about an individual class member's status or to get names added to the lists kept by the field offices.

Reports we have received indicate that confusion and misinformation on the settlement agreement are common at many SSA field offices. SSA's failure to delete or amend many POMS sections which continue to assert the old policy that a felony arrest warrant alone is a basis for suspension only adds to the confusion.

[20] See Attachment A.



Medicare Part B Impact

When *Martinez* class members who had their monthly Medicare Part B premiums paid out of their monthly Social Security had their monthly cash benefits suspended, some of them had their Part B premiums paid by their state Medicaid agency under one of the cost sharing programs and thus continued their Part B coverage uninterrupted. A few others had sufficient resources to continue their coverage by paying the required premiums. However, many class members were either unaware of the cost sharing programs or did not qualify for them, and were left with no other means to pay their Part B premiums and as a result lost their Part B coverage.

The POMS implementing the settlement currently state that those who lost their Part B coverage in this manner will not be automatically reenrolled in Part B and can only reenroll in a General Enrollment Period between Jan. 1 and March 31 of each year and must wait until July for coverage to commence with no coverage for medical expenses incurred prior to that date. POMS GN 02613.870, A.1.

In May 2010, class counsel secured an agreement from SSA that the POMS section would not be implemented as currently written.²¹ Instead, SSA has agreed to use its executive discretion to automatically enroll all class members who are eligible to enroll in Part B and are not currently enrolled. There will be no penalty added to the monthly premiums of these class members.

Class members will also be provided the option to enroll in Part B retroactive to the Part B termination date. If a class member chooses a retroactive enrollment date the enrollment must be for the entire time the individual was without Part B coverage. Class members must pay premiums for each month of retroactive coverage requested. Class members are not required to pay the entire amount of retroactive premiums in one lump sum. They can request an alternative method such as monthly installments or waiver of the retroactive premium amount. See HI 00805.180 and HI 00805.220. We are awaiting an implementation plan from CMS that will indicate how notice of this option will be provided to class members.

Class members who are currently enrolled in Part B and are charged a penalty because of enrollment in a general enrollment period will no longer be charged a penalty. These individuals will receive refunds for any penalties already paid. Class members who enrolled in Part B during the 2010 general enrollment periods will retain their current Part B entitlement date of the month of processing and be offered the opportunity to enroll retroactive to the Part B termination date.

IMPORTANT – Advocates may encounter confusion at local SSA offices with regard to the agency's policy on Part B reinstatement since, as of mid-September, 2010, the agency has yet to amend the POMS or otherwise notify local offices of the policy change to which they agreed. Advocates who encounter problems with regard to Part B reinstatement should contact class counsel.

[21] See Attachment F.



Section 3: Topics for Advocates: Tips for Identifying Class Members, Dealing with Problems, Securing Immediate Relief and More

Determining Class Membership

Class members include any Title II or Title XVI recipient or applicant whose benefits were suspended or denied based solely on the existence of a felony arrest warrant.

Individuals who have been able to get benefits reinstated through a good cause request or by getting the warrant vacated are included in the class and are entitled to overpayment relief and, depending on which group they are a member of, potentially some retroactive relief.

If you believe that your client is a member of the *Martinez* class, but are unable to get confirmation from SSA, check the timeline for providing relief (p. 14). If your client is not yet scheduled to receive notice of retroactive relief (p. 14-15), then make sure SSA has his or her current address (p. 20) and consider whether it makes sense to reapply for benefits now in order to speed relief (p. 20-21). If the time period for providing your client with notice and/or retroactive relief has passed, then you should request reinstatement. If you then receive a determination denying reinstatement, you can begin the administrative appeals process (p. 22). If reinstatement is denied, please send a copy of the notice denying reinstatement along with a summary of the relevant facts of your client's case to class counsel at narevalo@nslc.org. Similarly, if no action is taken on the request for reinstatement after a couple of follow-up calls to district office management, please forward a statement of the relevant facts to narevalo@nslc.org. Your reports will help class counsel detect patterns that could indicate a compliance issue.



A Note on Alleged Probation and Parole Violations

Not all individuals whose benefits were affected by an outstanding warrant are in the class. If the warrant was issued for an alleged probation or parole violation, the individual is not in the class.

How do you know whether your client's warrant was issued for an alleged probation or parole violation?

This will normally be clear after a careful interview of the client with respect to the circumstances of the offense and subsequent proceedings. If there has been a conviction, then the warrant was almost certainly issued for a probation or parole violation.²² If your client has been ordered to pay restitution, court fees or a fine, that means there has been a conviction. You should also check with the court clerk in the jurisdiction where the warrant was issued to find out if they can tell you why the warrant was issued and whether there was a conviction in the case.

As mentioned above, SSA's policy with regard to alleged probation and parole violations is being challenged in a separate class action lawsuit in New York, *Clark v. Astrue*. The U.S. Court of Appeals for the Second Circuit recently ruled in that case that SSA's policy of suspending benefits whenever an individual has an outstanding warrant for an alleged violation of probation or parole is unlawful, reversing a district court decision in favor of the government. The case has been remanded to the district court where a motion for nationwide class certification has been filed. If your client has lost benefits because of an outstanding warrant for an alleged probation or parole violation, it is very important that you assist them in filing an appeal so that they will be able to take advantage of any relief that may be granted by the court. Please contact the National Senior Citizens Law Center if you encounter any problems in appealing a suspension or denial on the basis of a probation or parole warrant.

[22] There are exceptions to this where someone is released pending sentencing. This is rarely encountered in the context of the fugitive penalty since it usually requires posting of a bond, which is not usually a possibility for an SSI recipient.



Outreach to Potential Class Members

Outreach and education by advocates will ensure that the benefits of the Martinez settlement reach those most in need. Individuals who lost benefits under the policy likely were forced to move, since without benefits they would have been unable to afford their rent or mortgage. Some moved in with relatives or friends, and many probably became homeless. Aggressive outreach efforts are necessary to ensure that these individuals claim the benefits they are owed, especially people in Group 3, who are likely to be the most difficult to reach and who must contact SSA within six months of receiving a notice to retain the protective filing date of April 1, 2009.

Advocates can help reach *Martinez* class members:

- Review old intakes and client records for potential class members. Many class members likely already contacted local legal aid programs for help in appealing the loss of benefits or in applying for health, housing or cash assistance to replace the lost income.
- Review intake procedures and, if necessary, add questions to identify potential class members who may have not heard about the settlement and may be calling about another problem.
- Affirmative outreach, e.g. visits to homeless shelters, food banks, soup kitchens, mental health programs and senior centers will likely uncover class members.
- Remember that outreach to family members or other contacts of class members is often as productive as direct outreach to class members.
- Use the National Senior Citizens Law Center's consumer fact sheet available at www.nsclc.org. English and Spanish versions are currently available. Check the NSCLC website as versions in other languages become available. Email narevalo@nsclc.org for Word versions that can be adapted to include contact information for local advocates.



Make Sure SSA Has Current Addresses

All class members should be advised to make sure that SSA has their current address to ensure that they receive SSA notices.

- People who were receiving Social Security benefits can update their addresses online at <https://secure.ssa.gov/apps6z/ICOA/coa001.jsp>. Social Security beneficiaries can also call or visit a local SSA office to request an address change, although the online process is preferable.
- SSI recipients cannot use the online site. They should instead contact their local SSA office and provide their current address and telephone number and ask to be put on the *Martinez* list which each Social Security Field Office is required to maintain.²³

Problems Getting Access to Relief

In implementing a settlement of this magnitude, glitches will be inevitable in individual cases. Individuals who do not receive notices or benefits to which they believe they are entitled under the *Martinez* settlement should request reinstatement or other appropriate relief under the settlement at their local SSA office and, if they receive a determination denying that relief, *appeal through the SSA administrative appeals process*. Advocates are encouraged to contact the National Senior Citizens Law Center with information about areas of possible noncompliance.

Class Members with Pending Appeals

Any class member who has an appeal pending at the reconsideration, administrative law judge, or Appeals Council stage is entitled to an immediate, on-the-record determination pursuant to processing instructions set forth in EM-09025, which instructs the decision-maker to “apply the policy in this EM when making the appeal decision.”

Advocates report success in obtaining favorable on-the-record ALJ decisions when they invoke this provision; doing so should be equally effective in appeals of suspensions, denials, and overpayment determinations.

Should My Client Reapply for Benefits?

Because of the lengthy schedule for providing retroactive relief (see page 14 *supra* for timeframes), many *Martinez* class members will be interested in knowing whether they can now reapply under the new policy to obtain benefits sooner.

The answer to this question depends on individual circumstances.

[23] EM 09025; POMS GN 02613.885B4.



- Class members in Group 1 and 2 who were applying for or receiving SSI and were age 65 or over at the time of suspension or denial may want to file a new application now since, under the settlement agreement and EM-09025, the new policy applies to them. They have nothing to lose by doing so. The one exception is for the limited group of people who, because of their immigration status, must demonstrate disability regardless of age in order to qualify for SSI.
- Class members in Group 2 who were applying for SSI on the basis of disability and do not already have a favorable disability determination might also want to file a new application now since they will have to go through the disability determination process in any event.
- SSI class members in Group 3 may want to file a new application now since a new application is going to be required in any event.
- Under the *Martinez* settlement, class members in Groups 1 & 2 who do have a prior disability determination are entitled to resume benefits without a redetermination of disability. If they decide to reapply for benefits, rather than waiting for relief, they could run the risk of a negative disability determination.
- For all *Martinez* class members who do choose to file a new application for benefits, advocates should follow-up to be sure that they still receive the retroactive relief to which the settlement entitles them (either full retroactive relief or relief back to the April 1, 2009 protective filing date).

Overpayments for Group 3

Anyone in Group 3 who is currently having an overpayment recovered from monthly Social Security or SSI benefits should immediately request a waiver of recovery.²⁴ Although SSA will probably cease continuing to recover the overpayment by the end of 2010, under the terms of the settlement, money already collected will not be refunded. Meeting the “without fault” requirement should be relatively easy, since class members were not fleeing and, in many instances were not even asked whether they were fleeing when applying for benefits.

[24] 20 CFR 404.506(c) & 416.550.



Basics: Appeals at SSA

There are four levels of review of all initial determinations. See 20 C.F.R. 404.902 & 416.1402 for a list of actions considered to be initial determinations and 20 C.F.R. 404.903 & 416.1403 for a list of actions considered not to be initial determinations.

- Reconsideration by the SSA local office.
- Hearing with an Administrative Law Judge (ALJ).
- Appeals Council review of ALJ decision.
- Federal district court.

The request for reconsideration must be filed within 60 days of receiving notice of the initial determination. The time limit for each subsequent step of the process is 60 days. If individuals miss a deadline in the administrative appeal process, they may still be able to pursue their appeal if SSA determines they had good cause for missing it.

In making good cause determinations, SSA will consider:

- The circumstances that kept a person from making the request on time;
- Whether SSA action misled the individual;
- Whether the person did not understand the requirements of the Social Security Act, resulting from amendments, other legislation, or court decisions; and
- Whether the individual had any physical, mental, educational, or linguistic limitations (including limited English proficiency) that prevented them from filing a timely request or from understanding or knowing about the need to file a timely request for review. 20 C.F.R. 404.911(a) & 416.1411(a).

Some examples of circumstances that may count as good cause include, but are not limited to, the following:

- The individual was seriously ill and was prevented from contacting SSA in person, by phone, in writing, or through a friend, relative, or other person;
- There was a death or serious illness in the immediate family;
- Important records were destroyed or damaged by fire or other accidental cause;
- The individual was trying very hard to find necessary information to support the claim but did not find it within the stated time periods;
- The individual asked for additional information explaining SSA's action within the time limit and, within 60 days of receiving the explanation, the individual requested reconsideration or a subsequent level of review;
- SSA gave misleading, incorrect or incomplete information about when and how to request administrative review or to file a civil suit;



Basics: Appeals at SSA (cont.)

- The individual did not receive notice of the determination or decision;
- The individual sent the request to another Government agency in good faith within the time limit and the request did not reach SSA until after the time period had expired; or
- Unusual or unavoidable circumstances exist, which show that the individual could not have known of the need to file timely, or which prevented him or her from filing timely. 20 C.F.R. 404.911(b) & 416.1411(b).

Note: This information is intended to familiarize readers with concepts that are relevant to representing *Martinez* class members. It is not a comprehensive introduction to SSA appeals procedures. For basic information about the SSI rules and appeals procedures, consult SSA's brochure at www.ssa.gov/ssi/text-understanding-ssi.htm (note that this document has not yet been updated to reflect the *Martinez* agreement). Advocates who are new to SSA appeals should consult with experienced advocates.



Determining if Client SSA Identifies As Group 3 Should Be Group 1 or 2

The practice of failing to process appeals, widespread at many Social Security District Offices, will result in many people being misidentified as not having appealed a suspension or denial. As a result, SSA may treat many class members as belonging to Group 3 (limited retroactive relief) when they ought to be in Group 1 or Group 2 (maximum retroactive relief), even though the individuals did appeal the suspension or denial and have not received a decision on reconsideration. Other people identified by SSA as Group 3 members may have good cause for filing a late appeal.

To ensure that all *Martinez* class members receive the maximum relief to which they are entitled, advocates should explore the facts thoroughly with each individual to whom SSA sends a Group 3 notice.

- Some people may be improperly assigned to Group 3 because SSA lost or otherwise failed properly to process their appeal. If an appeal was filed, and the individual had not received a response by August 11, 2008, they should seek to be included in Group 1 or Group 2.
- Other people may have good cause for failing to file an appeal. For instance, local SSA offices often told individuals that fleeing felon determinations could not be appealed as long as there was an outstanding warrant.²⁵ Establishing the existence of an unresolved appeal or good cause for missing the appeal deadline can result in several years' worth of additional retroactive benefits.

In these circumstances, advocates should help class members file a request for reconsideration to ensure that SSA properly identifies these people as members of Group 1 or 2. The request for reconsideration must be filed within 60 days of receiving the notice from SSA telling the individual to contact SSA within 6 months of the date on the notice. Class members will need the assistance of an advocate on this issue and should not be told to file a request for reconsideration on their own. The National Senior Citizens Law Center is interested in hearing from advocates about their experiences on this issue.

Class Members who are Currently Incarcerated

SSA estimated in December, 2009 that there were approximately 150 OASDI class members who were incarcerated. These individuals are part of the class and are entitled to relief, but, under legislation passed shortly after the settlement became final they are not able to receive retroactive payments until their release.

Deceased Class Members

The retroactive payments due to class members are treated as underpayments. The POMS sets out rules for the payment of underpayments to deceased beneficiaries. See sections SI 02101.003, GN

[25] 20 CFR 404.911(a)(2) & 416.1411(a)(2) both provide that good cause for missing a deadline can be established where "our action misled you."



02301.030-075.

Underpayments due to a deceased Title II beneficiary are generally paid to surviving family members (e.g. spouse, child, parent) entitled to receive benefits on the earnings record of the deceased or, in the absence of survivor, then to the estate.

The rules for Title XVI are different.²⁶ Underpayments due to a deceased adult Title XVI beneficiary can be paid to a surviving spouse with whom the individual was living at the time of death or within the six months immediately preceding the SSI recipient's demise. In cases where someone was denied on an initial application, if there is an outstanding Interim Assistance Reimbursement (IAR) agreement with a state or political subdivision, payments under that agreement must be first be paid to that state or political subdivision. Title XVI benefits cannot be paid to an estate.

Date Last Insured

SSDI class members in Group 2 are not required to meet the "date last insured" requirement as of the current date.

Are Class Members who claim benefits under the settlement risking apprehension by law enforcement?

The *Martinez* settlement does not affect SSA's continuing ability to share information with law enforcement agencies about people who receive or apply for benefits and who have outstanding felony arrest warrants. This sharing of information with law enforcement was not an issue in the *Martinez* case.

As a practical matter, SSA has already shared information about all class members with law enforcement. Before denying or suspending benefits based on an outstanding warrant, it was SSA's practice to first notify law enforcement in the jurisdiction that issued the warrant of the beneficiary's whereabouts. Only after the law enforcement agency notified SSA that it was uninterested, or after sixty days had passed without law enforcement agency action, did SSA initiate action to suspend SSI benefits.²⁷

Use of Retroactive Benefits

For many *Martinez* class members, the size of the retroactive benefits available will be sufficient to make a significant difference in people's lives, e.g., by enabling them to obtain decent housing. Planning the use of the retroactive benefit is very important.

[26] See generally SI 02101.003.

[27] GAO (General Accounting Office), GAO-02-716, Welfare Reform: Implementation of Fugitive Felon Provisions Should Be Strengthened.



- Impress upon clients the importance of devising a plan for using the money before they receive it, since an opportunity like this is unlikely to recur.
- Connect class members with community organizations that can help them with planning.
- Set up a cooperative arrangement with relevant community agencies and educate them about the settlement. You can then refer clients to these agencies and, even more important, you can reach the large number of people who will *not* come to your office but who may be in contact with the agencies.

Special Rules for SSI Recipients and Concurrent Beneficiaries

SSI recipients are subject to special rules regarding resources. It is very important for advocates to advise their clients about these rules so that they may remain eligible.

- Retroactive payments under the settlement, whether SSI or Title II, will be excluded from countable resources for nine months following the month of receipt.²⁸ Recipients will need to spend down to the \$2,000 resource limit before the end of the nine-month period in order to remain eligible for SSI.
- Anyone who transfers a resource for less than fair market value becomes ineligible for SSI for a number of months determined by the amount of the uncompensated transfer divided by the SSI monthly payment rate.²⁹ Thus, transfer of a few thousand dollars can result in several months of ineligibility. Under SSA's interpretation of this statutory provision, repayment of a loan where the obligation is legally enforceable does not result in a penalty, but repayment when the obligation is merely moral will trigger the penalty. This is a common dilemma for people who have received support from family and friends during the period they went without benefits. Significant gifts can also result in a period of ineligibility.

Concurrent SSI and Title II beneficiaries who are entitled to retroactive relief will probably receive their Title II retroactive payment significantly before any SSI retroactive payment. It is suggested that they not co-mingle the SSI payment with any remaining Title II money so that they will be able to properly calculate the nine month period for each benefit.³⁰

New Disability Determinations

A number of people whose SSI benefits were suspended because of an outstanding warrant later managed to get the warrant vacated and were then told that since their warrant had been outstanding for more than 12 months they would have to reapply for SSI. Many of them were determined not to be disabled and thus had their application denied. In cases involving members of Group 1

[28] 20 C.F.R. § 416.1233 (2009).

[29] 42 U.S.C. § 1382b(c)

[30] Id. § 1233(d).



where this denial took place prior to April 1, 2009, SSA has taken the position that retroactive relief under Martinez can only be provided for a closed period through the month preceding the adverse disability determination. POMS GN 02613.875.A . Class counsel have concluded that this policy with respect to members of Group 1 is a violation of the settlement agreement and that once disability benefits have been reinstated they can be terminated on the basis of a medical determination only through a regularly scheduled continuing disability review (CDR). This is significant because in the case of a CDR the agency has the burden of establishing that there has been medical improvement since the individual was first determined to be disabled whereas in an initial application the medical improvement standard does not apply and it is the claimant who must meet the burden of establishing disability. In addition, class members whose SSI benefits have been suspended will often lack access to medical care and will not have the medical documentation necessary to establish disability. Advocates who encounter problems with regard to new disability determinations should contact class counsel.

Second Circuit Practitioners (Connecticut, New York and Vermont)

Because the Second Circuit in the *Fowlkes* decision invalidated the SSA's former fleeing felon policy in 2005, SSA chose to completely abandon enforcement of the policy in the jurisdiction of the Second Circuit.

As a result no one in that three-state area—Connecticut, New York, and Vermont—has had benefits suspended or denied on the basis of an outstanding felony warrant since April 2006. Thus the impact of the *Martinez* settlement will be considerably less in those states. However, some cases will arise.

- People who moved into the Second Circuit after having their benefits cut off or denied elsewhere may be entitled to retroactive relief.
- Some people whose benefits were suspended or denied prior to the *Fowlkes* decision and who have not since been reinstated who will now be entitled to the April 1, 2009 protective filing date if they respond within 6 months of receiving a notice from SSA.
- A very small group with warrants relating to a charge of “flight” or “escape” who benefitted from SSA's complete cessation post-*Fowlkes* of enforcing the “fleeing” provision will now lose their benefits.



For More Information

A variety of resources are available to advocates who want to learn more about the *Martinez* settlement and its impact on clients. In addition to this guide, case documents (including the settlement agreement) and consumer handouts are available on the National Senior Citizens Law Center's website.³¹ NSCLC has created a *Martinez* settlement listserv that is a source of regular updates on SSA's compliance with the implementation timeline; to join the listserv email narevalo@nsclc.org. Membership in the listserv is available only to advocates. NSCLC attorneys are also available to provide technical assistance to advocates.

The *Martinez* settlement gives significant relief to the individuals who fell victim to SSA's illegal policy. We look forward to working with advocates to ensure that the benefits of this settlement reach as many individuals as possible.

[31] <http://www.nsclc.org/areas/social-security-ssi/Martinez-Settlement>



ATTACHMENT A:
SSA Emergency Messages
09024 (Mar. 31, 2009) and 09025 (April 1, 2009)



SocialSecurityOnline
www.socialsecurity.gov

Policy Instruction

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Identification Number	EM-09025	Effective Date: 04/01/2009
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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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: December 31, 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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ATTACHMENT B:

Sample Notice to Group 1 & 2 Title II Beneficiaries



TN 11 (08-10)

GN 02613.867 Title II Post 2006 Martinez Settlement Notice and Paragraphs

A. Title II Post 2006 Martinez Settlement Notice Exhibit

This is the exhibit for the post-2006 Martinez Class Members. A copy of this letter is available for viewing on the Online Retrieval System (ORS), # 11 MASS MAIL off the ORS Main Menu, item #19, T2-post-2006.

Social Security Administration

Retirement, Survivors, and Disability Insurance

Important Information

Payment Center Name

Office Address:

Claim Number:[SSN]

[Date of mailing]

Payee Name and address

IMPORTANT – READ CAREFULLY

We recently agreed to a settlement in a court case called *Martinez v. Astrue*. The *Martinez* settlement changes the types of felony arrest warrants that we will use to suspend Social Security benefits. This settlement does not apply to persons whose benefits we stopped because of an arrest warrant for a parole or probation violation.

As of April 1, 2009, under the Martinez settlement, we are suspending benefits for only certain types of felony arrest warrants. Some individuals who were suspended January 1, 2007 or later may get back benefits.

We are sending this letter to alert potential class members of this settlement agreement. We will tell you in another letter if you qualify for relief under this settlement and if we plan to restart your benefits. You do not need to contact us about this.

If You Have Any Questions

We invite you to visit our website at www.socialsecurity.gov on the Internet to find general information about Social Security. If you have any specific questions, you may call us at 1-800-772-1213. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

[SSA Field Office address]

If you do call or visit an office, please have this letter with you. It will help us answer your questions.

SI USTED HABLA ESPANOL

Si usted habla español y no entiende esta carta, por favor llame o visite su oficina local de Seguro Social. Un representante de la oficina de Seguro Social le explicará esta carta. Debe informarle que usted está respondiendo al aviso, *Martinez v. Astrue*.

1. Title II Martinez paragraphs

The following are special captions and paragraphs for use in Martinez cases. The captions are listed in [GN 02613.867A.2](#). (in this section) and the paragraphs are listed in [GN 02613.867A.3](#). (in this section). The system automatically utilizes the appropriate language in TII Redesign (T2R); MADCAP actions utilize the same language.

2. Caption for Martinez settlement relief notices

Notice System	UTI Number	Language
T2R	FUGC05	INFORMATION ABOUT THE MARTINEZ SETTLEMENT
AURORA	CAP81	Information About the Martinez Settlement

3. Martinez settlement relief resumption paragraph

Notice System	UTI Number	Language
T2R AURORA	FUG104	<p>We have reviewed (_1_) claim because of the settlement of the Martinez court case. This settlement changes the types of warrants that we can use to affect the payment of benefits. Our records show that (_2_) an outstanding warrant that we will no longer use to affect the payment of (_3_) benefits.</p> <p>Fill-ins:</p> <ol style="list-style-type: none">Choice 1 – your Choice 2 – Beneficiary’s nameChoice 1 – you have Choice 2 – Beneficiary’s name hasChoice 1 – your Choice 2 – his Choice 3 - her

B. PSC AURORA Post-2006 Title II Martinez Generic Settlement Notice

You will find the post-2006 Title II Martinez generic settlement notice in AURORA. The notice identifier is E4002, Martinez Title II Post-2006.

Process the E4002, Martinez Title II Post-2006 Martinez Settlement notice as follows:

- Prepare the E4002 notice to the beneficiary or representative payee on behalf of the beneficiary.
- Send a copy of this notice to the Online Retrieval System (ORS) for documentation that you sent the beneficiary a post-2006 T2 Martinez generic notice.
- Follow the instructions for processing requests for special notices for blind or visually impaired claimants and beneficiaries as indicated in EM-09088 SEN REV3 dated 12/31/09 and EM-10021 SEN dated 3/17/10.
- Hold the case for two processing days after releasing the notice for mailing.

After the 2-day hold on the case, continue processing the reinstatement action per the instructions in [GN 02613.865D.3.b.](#), step 3.

C. Post-2006 Title II Martinez Generic Notice on DPS

This notice is now available in the Document Processing System (DPS). It is in the Post Entitlement folder and is titled “Martinez Title II Post-2006.”

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/0202613867>



[Privacy Policy](#) | [Website Policies & Other Important Information](#)

ATTACHMENT C:
Sample Notice to Group 1 & 2 Title XVI Beneficiaries



**Social Security Administration
Supplemental Security Income**

605 N Arrowhead Ave
Suite 101
Anywhere, CA 92400

Date: March 1, 2010
Claim Number: xxx-xx-xxx

Joe Recipient
222 Apple Street
Anywhere, CA 92400

Dear Joe Recipient

You may be a class member in a recently settled court case called *Martinez v. Astrue*. This is a very important letter about your potential eligibility for Supplemental Security Income (SSI) under the terms of the settlement agreement. Some persons whose payments we stopped or denied on January 1, 2007, or later may get back money. Please read this letter carefully. If there is anything you do not understand, please get in touch with us right away.

You Have An Appointment

We must regularly review the cases of people who get SSI. We need information from you to make sure you are still eligible.

We want to talk to you on April 15, 2010 at 11:00 AM. On that date:

- Call us at (909) 355-1234 and ask for Ms. White.

If you can't keep your appointment, please call us. We will make another appointment for you.

When you call or come in, please have this letter with you.

Eligibility Based On *Martinez* Settlement

The *Martinez* settlement changes the types of felony arrest warrants that we will use to stop or deny SSI payments. This settlement does not apply to persons whose payments

we stopped because of an arrest warrant for a parole or probation violation. As of April 1, 2009, we will stop or deny SSI payments for only certain types of felony arrest warrants.

We have scheduled this appointment to determine if you can get SSI based on this settlement.

Things We Need for the Appointment

When you talk with us, please try to have all of the items shown below from August 1, 2007 to present. Even if you don't have all of the information, we need to hear from you. We will help you get anything you do not have.

We must see the original document(s) or a certified copy of these item(s). We cannot accept photocopies. We will return these items to you.

- Bank statements: savings and checking accounts, and any other bank statements for Bank of America 080107 to present.
- Pension records from: the Department of Veterans Affairs, Railroad Retirement Board, Civil Service, State, military, private pensions.
- Pay stubs from work or, self-employed, last year's income tax return for Manpower Agency (If tax return is not available, we need all records that show last year's business income and expenses).
- Unemployment compensation payment records and/or worker's compensation award letter.
- Life insurance policies and/or burial contract agreement.

If We Do Not Hear From You

You must contact us within 60 days from the date of this letter. If you do not, you may lose eligibility to payments provided by the *Martinez* settlement.

If You Have Any Questions

If you have any questions or need help, please call us at (909) 355-0124 ext. 3000 and ask for Ms. White. The office hours are: 9:00 AM to 4:30 PM.

Rickie Stephens
District Manager

ATTACHMENT D:
Sample Notice to Group 3 Title II Beneficiaries



TN 11 (08-10)

GN 02613.869 Title II Pre 2007 Martinez Settlement Notice and Paragraphs

A. Title II Pre-2007 Martinez Settlement Informational Notice

This is the exhibit for the pre-2007 Martinez Class Members. We mailed this letter to all identified Title II Martinez Class Members on 4/14/10. A copy of this letter is available for viewing on the Online Retrieval System (ORS), # 11 MASS MAIL off the ORS Main Menu, item #18, T2-pre-2007.

Social Security Administration

Retirement, Survivors, and Disability Insurance

Important Information

Payment Center Name

Office Address:

Claim Number

Payee/Beneficiary Name

Address

IMPORTANT – READ CAREFULLY

You may be a class member in a recently settled court case called *Martinez v. Astrue*.

The *Martinez* settlement changes the types of felony arrest warrants that we will use to suspend Social Security benefits. This settlement does not apply to persons whose benefits we stopped because of an arrest warrant for a parole or probation violation.

As of April 1, 2009, we are suspending benefits for only certain types of felony arrest warrants.

Based on this settlement, if we stopped paying you on or after January 1, 2005, and before January 1, 2007, because of certain types of felony arrest warrants:

- We will remove any remaining fugitive felon overpayment balance on your record. We will tell you in another letter when we remove an overpayment balance. You do not need to contact us about this.
- We may start payments if you were not getting payments as of April 1, 2009. If you call us within 6 months of the date of this letter and you qualify, we can start payments as far back as April 1, 2009. To get these payments you must call us at **1-800-772-1213**.

If You Have Any Questions

We invite you to visit our website at www.socialsecurity.gov on the Internet to find general information about Social Security. If you have any specific questions, you may call us at 1-800-772-1213. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

SSA FO Address

If you do call or visit an office, please have this letter with you. It will help us answer your questions.

SI USTED HABLA ESPANOL

Si usted habla español y no entiende esta carta, por favor llame o visite su oficina local de Seguro Social. Un representante de la oficina de Seguro Social le explicará esta carta. Debe informarle que usted está respondiendo

al aviso, *Martinez v. Astrue*.

Signature

ARC PSC Director

B. ROAR and Reinstatement Paragraphs

We developed special language to use for pre-2007 Martinez overpayment relief cases. The captions for the language are listed in [GN 02613.869B.1](#). (in this section) and the specific paragraph language is listed in [GN 02613.869B.2](#). (in this section). The system automatically utilizes the appropriate language in creating the notices sent to the beneficiary to explain removal or reduction of the pre-2007 fugitive felon overpayment.

1. Caption for Martinez Settlement relief notices

Notice System	UTI Number	Language
ROAR	FUGC05	INFORMATION ABOUT THE MARTINEZ SETTLEMENT
MADCAP	CAP81 FUGC05	INFORMATION ABOUT THE MARTINEZ SETTLEMENT
AURORA	CAP81 FUGC05	INFORMATION ABOUT THE MARTINEZ SETTLEMENT

2. Martinez settlement overpayment relief paragraph

Notice System	UTI Number	Language
ROAR	FUG106	We (1) (2) overpayment on our records because of the settlement of the Martinez court case. This settlement changes the types of arrest warrants that we can use to affect the payment of benefits. Fill-ins: a. Choice 1 – removed Choice 2 – reduced b. Choice 1 – your Choice 2 – Beneficiary’s name
AURORA MADCAP	S49	We (1) (2) overpayment on our records because of the settlement of the Martinez court case. This settlement changes the types of arrest warrants that we can use to affect the payment of benefits. Fill-ins: a. Choice 1 – removed Choice 2 – reduced b. Choice 1 – your Choice 2 – Beneficiary’s name

C. PSC AURORA Pre-2007 Title II Martinez Informational Settlement Notice

You will find the Pre-2007 Title II Martinez generic settlement notice in AURORA. The notice identifier is E4003, Martinez Title II Pre-2007.

Process the E4003, Martinez Title II Pre-2007 Martinez Settlement notice as follows:

- Prepare the E4003 notice to the beneficiary or representative payee on behalf of the beneficiary.
- Send a copy of this notice to the Online Retrieval System (ORS) for documentation that you sent the beneficiary a pre-2007 T2 Martinez generic notice.
- Follow the instructions for processing requests for special notices for blind or visually impaired claimants and beneficiaries as indicated in EM-09088 SEN dated 12/31/09 and EM-10021 SEN dated 3/17/10.
- Hold the case for two processing days after releasing the notice for mailing.
- After the 2-day hold on the case, continue processing the reinstatement action per the instructions in [GN 02613.868B.4](#).

D. FO Availability for Viewing Pre-2007 Title II Martinez Informational Settlement Notice

In order to respond to inquiries from beneficiaries regarding the pre-2007 Martinez generic notice mailing, the FO now has the ability to view the language that was included in the Title II pre-2007 generic notice that we sent to Martinez Class Members. This notice is available in the Document Processing System (DPS). It is located in the Post Entitlement folder titled “Martinez Title II Pre-2007.”

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/0202613869>

ATTACHMENT E:
Sample Notice to Group 3 Title XVI Beneficiaries



SAMPLE

Social Security Administration Supplemental Security Income Important Information

Field Office
P.O. Box 2000
Minot, ND 58701

Date: MM/DD/YYYY
Claim Number: XXX-XX-XXXX

Edgar Eight
200 88 Ave SE
Minot, ND 58701

You may be a class member in a recently settled court case called *Martinez v. Astrue*. The *Martinez* settlement changes the types of felony arrest warrants that we will use to suspend or deny Supplemental Security Income (SSI) payments. This settlement does not apply to persons whose benefits we stopped because of an arrest warrant for a parole or probation violation.

As of April 1, 2009, we suspend or deny payments for only certain types of felony arrest warrants relating to flight or escape.

Based on this settlement, if we stopped paying you on or after January 1, 2000, and before January 1, 2007, because of certain types of felony arrest warrants:

- We will remove any remaining fugitive felon overpayment balance on your record. You do not need to contact us about this.
- We may start payments if you were not getting payments as of April 1, 2009 and you are still eligible for SSI. **If you call us within 6 months of the date of this letter and you qualify, we can start payments as far back as April 1, 2009.** You may have to file a new application to qualify for SSI payments. For more information about these payments, you must call us at **1-800-772-1213**.

If You Have Any Questions

For general information about SSI, please visit our website at www.socialsecurity.gov on the Internet. You will find the law and regulations about SSI eligibility and payment amounts at www.socialsecurity.gov/SSIrules/.

For general questions about SSI or specific questions about your case, please call us at 1-800-772-1213. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. If you need assistance for any reason, you can also write or visit any Social Security office. The office that serves your area is located at:

SSA
2500 Jacobs Ave.
Minot, ND 58701

If you do call or visit an office, please have this letter with you. It will help us answer your questions.

SI USTED HABLA ESPANOL

Si usted habla español y no entiende esta carta, por favor llame o visite su oficina local de Seguro Social. Un representante de la oficina de Seguro Social le explicará esta carta. Debe informarle que usted está respondiendo al aviso, *Martinez v. Astrue*.

Regional Commissioner

ATTACHMENT F:
Letter Stating SSA Position on Medicare Part B Benefits





U.S. Department of Justice
Civil Division

First Class Mail
P.O. Box 883
Washington, DC 20044

Courier Delivery
Room 6107
20 Massachusetts Avenue, NW,
Washington, DC 20530

Lily Farel
Trial Attorney

Telephone
Fax
Email

(202) 353-7633
(202) 616-8460
lily.farel@usdoj.gov

May 7, 2010

VIA ELECTRONIC MAIL and U.S. MAIL

Gerald A. McIntyre
National Senior Citizens Law Center
3435 Wilshire Blvd., Suite 2869
Los Angeles, CA 90010

Re: *Martinez v. Astrue*, 08-cv-4735-CW (N.D. Cal)

Dear Mr. McIntyre:

I write in response to your letter of March 11, 2010 concerning Plaintiffs' intention to seek mediation on the issue of Medicare enrollment rights for Post-2006 Title II class members. In that letter, you assert Plaintiffs' position that the Settlement Agreement in *Martinez* requires Defendant to automatically re-enroll class members into Medicare Part B, to determine premiums without enrollment penalty, and finally, to allow class members to pick a retroactive re-enrollment date and obtain retroactive coverage. Defendant's position continues to be that neither the Settlement Agreement itself nor the accompanying documents include Medicare benefits in the benefits available to class members. Indeed, none of those documents even contemplates Part B coverage. Therefore, Defendant is in full compliance with the Settlement.

Without prejudice to Defendant's position that the Settlement Agreement does not cover the relief you request in your letter, the government is willing to provide individuals who happen to be members of the Plaintiff class in the above-referenced matter with some of the access to Medicare benefits that you claim they are due under the Agreement. Please understand that the opportunity to obtain the Medicare benefits outlined below is not being provided because of any obligation imposed by the Settlement Agreement, but purely as a matter of executive discretion, and should not be seen in any way as an admission that the Agreement creates any right to any relief relating to the Medicare benefits discussed below. By the same token, the government's discretionary decision to provide access to such benefits does not itself create any rights in any individual who does not obtain benefits under the terms described below. Even as to any individual who does obtain benefits under those terms, the decision to allow Medicare benefits as described in this letter continues to be wholly within the government's discretion and should not be viewed as a precedent for other situations.

All individuals who are class members, who are otherwise eligible to enroll in Medicare Part B and who are not currently so enrolled, will be automatically enrolled without any required action by such an individual and with no premium surcharge. After the automatic enrollment, the individual will be offered the right to refuse Part B (with the refund of any premiums paid), as well as be given the option of enrolling in Part B retroactive to the Part B termination. Any individual who is currently enrolled in Part B and charged a premium surcharge due to enrollment during the general enrollment period will no longer be charged a surcharge. To the extent such individuals have paid surcharges, the surcharges will be refunded. If such an individual enrolled in Part B during the 2010 general enrollment period, that individual will retain his or her current Part B entitlement date of the month of processing (and any premium surcharge imposed due to enrollment during the general enrollment period will be removed) and be given the option of enrolling in Part B retroactive to the Part B termination date.

All individuals who are class members can choose whether to obtain retroactive benefits or receive only prospective benefits. If the individual chooses to obtain retroactive enrollment, the enrollment (and the premiums paid by the beneficiary) must be for the entire time the beneficiary was without Part B benefits. Please note, however, that the individual may request an alternate method of paying retroactive premiums rather than having the total retroactive premium amount deducted from social security benefits in a lump sum. Usually this involves paying by monthly installments or requesting waiver of the retroactive premium amount. The POMS has established procedures for addressing situations where a beneficiary may suffer undue financial hardship if he or she must pay the premium arrearage in a lump sum. See HI 00805.180 and HI 00805.220. SSA will apply these POMs on a case-by-case basis.

As explained earlier, Defendant maintains his position that he is in full compliance with the Settlement Agreement. The accommodation described in this letter is offered only as a matter of executive discretion, and nothing in this letter should be understood as an admission that the benefits discussed above are provided for by the Settlement or accompanying documents.

Sincerely,

/s/

Lily Farel

The National Senior Citizens Law Center is the only national non-profit whose principal mission is to protect the rights of low income older adults. Through advocacy, litigation, and the education and counseling of local advocates, we make the law work to ensure their health, economic security, and access to the courts.

