

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

June 14, 2019

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Submitted via email to: [Mary.Ann.Zimmerman@ssa.gov](mailto:Mary.Ann.Zimmerman@ssa.gov)

Re: “Notice of a new matching program,” 84 FR 21889 (May 15, 2019), Docket No. SSA 2019-0002

Justice in Aging is a national nonprofit legal advocacy organization that fights senior poverty through law. We are committed to ensuring access to social safety net programs which elderly populations depend on, such as Social Security and Supplemental Security Income (SSI). Our work focuses especially on older adult populations that have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency. We regularly work to highlight and address the needs of low-income older adults.

We are writing in response to the Social Security Administration (SSA) “Notice of a new matching program” with the Law Enforcement Agency (Source Jurisdiction) that is purportedly meant to identify individuals who are “(1) fleeing fugitive felons, parole violators, or probation violators, as defined by the Social Security Act (Act) and in accordance with the Martinez Settlement and the Clark Court Order; and who are also (2) Supplemental Security Income (SSI) recipients, Retirement, Survivors and Disability Insurance (RSDI) beneficiaries, Special Veterans Benefit (SVB) beneficiaries, or representative payees for SSI recipients, RSDI beneficiaries, or SVB beneficiaries.

Justice in Aging was a counsel of record for plaintiffs in both *Martinez v. Astrue*, No. 08-4735 (N.D. Cal. September 24, 2009) (“Martinez”)<sup>1</sup> and *Clark v. Astrue*, 06 Civ. 15521 (S.D.N.Y.,

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<sup>1</sup> The Martinez Settlement Agreement is attached for your convenience and is also available on our website here: <https://www.justiceinaging.org/wp-content/uploads/2015/03/Martinez-v-Astrue-Settlement-Agreement.pdf>. Additional information and documents related to the case are available on our website here: <https://www.justiceinaging.org/our-work/litigation/martinez-v-astrue-litigation/martinez-v-astrue-case-information-for-advocates/>

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April 13, 2012) (“Clark”)<sup>2</sup>. The litigation, subsequent court order in Clark, and settlement in Martinez, ensured that recipients of critical benefits, including Social Security and SSI, were not illegally cut off from those benefits by SSA as a result of being improperly categorized as fleeing to avoid prosecution of a felony or being in violation of a condition of probation or parole. SSA currently has a data matching program with the FBI’s National Crime Information Center (NCIC) which identifies individuals with arrest warrants for felonies or for alleged probation or parole violations who are either receiving benefits under one of the programs administered by the agency or who are serving as representative payee for a person receiving such benefits. The NCIC database is the database of arrest warrants to which all federal, state and local law enforcement agencies across the United States have 24 hour access. As a result, if a law enforcement agency is actively interested in securing an individual’s arrest, they are almost certain to post it with the NCIC.

For the last two decades, SSA has considered this data matching program with the NCIC to be sufficient. SSA does not indicate what has changed to make this new data matching program necessary. The notice lacks any explanation regarding the need for this new program or how the program differs from matching program currently in effect. Without this information we can not support the creation of another matching program that could violate the rights of those entitled to benefits.

The notice also fails to discuss whether this new data matching program is expected to identify certain types of warrants not currently picked up from the NCIC database. If so, SSA should identify those types of warrants. Relatedly, the notice does not state whether or not law enforcement agencies participating in this data exchange will be required to use NCIC codes for all warrants they choose to include in the new data matching program. Furthermore, while the Notice states that the purpose of the new computer matching program with Source Jurisdiction is “to identify individuals in the Source Jurisdiction who are (1) fleeing fugitive felons, parole violators, or probation violators ... ,” nowhere does it give any indication as to how this new data matching program will be able to identify whether an individual is fleeing or is violating a condition of probation or parole.

The Notice also lists the categories of individuals whose information is involved in this matching program as “fleeing fugitive felons, probation violators or parole violators, as defined by the Act and in accordance with the Martinez Settlement and the Clark Court Order.” However, SSA does not indicate how it will abide by the restrictions in Martinez and Clark to ensure that the agency does not improperly categorize individuals and terminate their benefits incorrectly based on information obtained from the Source Jurisdiction. It is imperative that SSA ensures that any termination of benefits based on this new matching program is correctly implemented and applied.

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<sup>2</sup> The Order is attached for your convenience and is also available on our website here: <https://www.justiceinaging.org/wp-content/uploads/2015/02/Clark-Order-PDF.pdf>. Additional information and documents related to the case are available on our website here: <https://www.justiceinaging.org/our-work/litigation/clark-v-astrue-litigation/>

We ask that before proceeding with this new data matching program SSA provides additional information to allow for a more thorough understanding of the program, including why it is necessary, how it will work, and how SSA will ensure that the rights of the individuals receiving benefits will be protected, so that we may offer more substantive feedback and a more comprehensive assessment of the program. If you have any questions concerning this submission, please contact Tracey Gronniger, at [tgronniger@justiceinaging.org](mailto:tgronniger@justiceinaging.org).

Respectfully submitted,

Tracey Gronniger